A COMPARISON BETWEEN THE AMERICAN INSTITUTE OF ARCHITECTS' AND THE UNITED STATES NAVY'S CONSTRUCTION CONTRACT GENERAL PROVISIONS

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CHAPTER I

INTRODUCTION

The execution of contractual agreements between two private parties is generally limited to the good faith enforcement of expressed contract rights and implied rights established by common law. However, a multitude of rules promulgated by statutes, regulations and decisions significantly affect the rights and responsibilities of all parties to a contract when one of those parties is the Government. Not only do these rules dictate the content of Government contract provisions, but they affect the application of common law in determining implied rights and responsibilities and the method of the Government's administration of the contract.

This paper will strive to generally illustrate both the differences and similarities between private and military construction contracting. It will then more specifically compare important clauses in the U.S. Navy's General Provisions for construction contracts and the American Institute of Architects' (AIA) most important construction contract document, the A201, General Conditions of the Contract for Construction. The two contract documents' assignment of rights and responsibilities to the Owner, the Contractor and the Architect, who is often a third party to the construction contract, will be

discussed and evaluated. The goal will be for the interested reader to become more aware of the possible opportunities and pitfalls for each party in relation to specific clauses and gain an appreciation for the difficulties experienced by Contractors transitioning between private and military construction contracting.

CHAPTER II

GENERAL COMPARISON OF MILITARY AND PRIVATE CONTRACTING

2.1 Authorization for Military Contracting

In order to better appreciate the differences between military and private construction contracts, it is worthwhile to discuss how military contracting is authorized and governed.

All laws and regulations for military contracting are derived from Article 1 of the Constitution which states, "Congress shall have the power to raise and support Armies" and "to provide and maintain a Navy". To carry out the intent of the Constitution, it was necessary for Congress to establish laws which were regulatory in nature. Title 10, United States Code (U.S.C.) governs all military functions including contracting. In addition to Title 10, there are many congressional enactments, executive orders, directives, public laws, and regulations controlling Government acquisition (7:11-12).

The Federal Acquisition Regulation (FAR) serves to consolidate all the provisions established by the various sources described above and to set forth policies and procedures for all contracting by the executive agencies of the Federal Government. The FAR is issued and maintained by the Department of Defense (DOD), the General Services Administration (GSA) and the National Aeronautics and Space Administration (NASA). The DOD supplements the FAR with the DOD FAR Supplement (DFARS) which may be more restrictive than

the FAR. The Navy further restricts the DFAR through issuance of the Navy Acquisition Regulation Supplement (NARSUP) and the Naval Facilities Engineering Command P-68 Contracting Manual. Updates to the FAR are issued frequently and are known as Federal Acquisition Circulars (FACS). These must in turn be promulgated through each agency (7:13-14).

2.2 FAR Clauses

To date, the process described above has resulted in close to 100 mandatory construction contract clauses amounting to 77 pages of text. If the Navy's General Paragraphs and Additional General Paragraphs are added, the General Provisions for a typical Navy construction contract encompass approximately 100 pages of text. Selected FAR clauses and the General Paragraphs, which are referred to throughout this report, are provided as Appendix A. The AIA's General Conditions encompass only 19 pages of text, portions of which are provided in Appendix B.

Realizing the enormity of the Navy's General Provisions will most certainly be an eye-opening experience for a Contractor bidding on his first Navy contract. However, that amazement will probably pale in comparison to his reaction when he discovers that he is responsible for all FAR clauses, even if they are inadvertently omitted from the contract by the contracting office. Additionally, all applicable FAR regulations, whether incorporated into a required clause or not, are completely binding on a Contractor. The courts have held to this consistently (9:4).

The Contractor must keep abreast of all FAR provisions and the never-ending changes to these provisions. Motivation to continually study the FAR

clauses may be difficult for a Contractor to muster after he realizes a large number of those clauses have little to do with ensuring smooth execution of the contract. Many clauses are required only to further the social and economic agendas of the Government. Examples include the Buy American Act - Construction Materials clause, the Small Business and Small Disadvantage Business Sub-contracting clause and the Compliance with Davis-Bacon and Related Acts Requirements clause. Many other clauses are included to protect the U.S. Treasury from fraud and collusion. The Gratuities clause, the Audit-Sealed Bidding clause and Anti-Kickback Procedures clause fall into this category.

While the Government's reasons for inclusion of the clauses described above may be noteworthy, they certainly result in many qualified Contractors refusing to do Government work and participating only in private contracting.

2.3 Express Authority of a Government Official

A significant difference between private and Government contracts is the concept of express authority of a Government official. The constitution has established the Federal Government as a government of delegated powers only. The Government's Contracting Officers do not have the same broad contracting authority as natural persons or corporate executives. A corporation will likely be bound by an agreement made by one of its agents, whether the agent had express authority to make that agreement or not. This doctrine of apparent authority is theoretically inapplicable to the Government (5:3.11).

A Government official must clearly have express authority to make an agreement binding. This requirement has resulted in different levels of authority being expressly granted to Government employees involved in the contracting

process (8:2). The structure of a typical Government contracting organization may cause confusion and frustration which in turn may lead a Contractor to perform work he thought was authorized, but for which he will not be compensated.

However, if a Government employee makes false representations in an area he is expressly authorized to make representations, the courts have bound the Government to these misrepresentations (5:3.9). For example, a Government inspector is not authorized to order work, but he is authorized to inspect and reject work. If he declares some work unsatisfactory and orders it removed and if that work was actually in compliance with contract requirements, he will have bound the Government to pay for the additional work he caused.

If an effort to act equitably, the courts have also estopped the Government from asserting their agent lacked the authority to bind the Government when it would be unjust to protect the Government and when the Government had the legal ability to allow the agent such authority (5:3.9).

2.4 Firm Bid Rule

Under common law, as it relates to private contracts, a bidder may withdraw his bid any time prior to acceptance unless he has received consideration to keep his offer open for a specified period of time. This is generally true even if the bidder has expressly promised to keep his bid open by providing a bid security. However, in Government contracting, it has been held by the courts that the bidder cannot withdraw his offer or recover his bid

security in the absence of the Contractor making an honest mistake or a misrepresentation on the part of the Government (5:3.11).

This doctrine is justified by the fact that the Government is disadvantaged in that it must either accept the lowest offer or reject all of the bids and readvertise. Therefore, it is reasoned that the Government needs additional time after bid opening to investigate possible fraud (5:3.11).

2.5 Government Appropriations

Congress' persistent desire to maintain tight budgetary control over executive agency contracting is necessary, but significantly reduces that efficiency in which a constructed project can be completed. The Anti-Deficiency Act, 31 U.S.C. prohibits any obligation of Government funds in excess or in advance of "an amount available in an appropriation" (1:9). This in essence has been interpreted to mean that no work will commence until the money is "in the hands" of the contracting office. While a private Owner may order work for which he presently lacks funds, the Government must wait until the funds are available.

Additionally, the Government's reaction to past waste of public funds in Government acquisition has resulted in many mandated funding approval constraints and audit requirements. In the absence of special circumstances, the price for work must be first determined, that price and all supporting cost data must be then approved by the proper authority and finally the funds must be on hand before the work starts.

Many Contractors find it wasteful to stop work for the time needed to accomplish the requirements described above and are compelled to assume the

risk and precede with the work prior to funding. Others may view the situation more positively as a possible windfall due to the escalating delay costs. In either case, delays in accomplishing required changes during construction can be expensive.

2.6 Oral Modification

Historically, in the sphere of Government contracts, courts have strictly enforced the "no change unless in writing" clause and denied recovery for work performed without a written change order. By this strict enforcement, the courts hoped to prevent fraudulent and exorbitant claims and to circumvent any possible collusion between officials and Contractors. In contrast, courts have usually held that parties to a private construction contract could modify that contract in any ordinary manner, including oral modifications. Of course, enforcement of these modifications would be decided on principles of promissory estoppel, authority of the party making the modification, course of conduct, waiver and estoppel (2:339-343).

2.7 Remedies

The matter of remedies also presents a practical difference between private and Government contracting. In private contracting, the usual recourse is to bring suit for breach of contract unless the contract has a mandatory arbitration clause, if there is no arbitration clause, or both parties agree to letting an arbitrator settle the specific dispute. In Government contracting, the Contractor must have a specialized knowledge in the maze of remedies. Bid protests may only be settled by the General Accounting Office. Disputes arising

out of the contract must first be decided by the Contracting Officer prior to bringing suit in the U.S. Court of Claims or the agency's Board of Contract Appeals. The procedure is complex and there is a specialized format which must be followed. An additional avenue successfully taken by many Contractors, which is not available in private contracting, is to request relief from a higher official in the military department or Government agency or even from a Senator or Congressman.

Remedies and the disputes process specifically set forth in both the AIA's and Government's construction contract documents will be discussed in detail later. Presently, it is sufficient to point out that the process in Government contracting is significantly different than in private contracting.

2.8 Similarities

In 1985 the Supreme Court stated that when the Federal Government "comes down from its position of sovereignty and enters the domain of commerce, it submits itself to the same laws that govern individuals there," and in 1966 a U. S. Court of Claims stated, "when the United States, with constitutional authority, makes contracts, it has rights and incurs responsibilities similar to these of individuals who are parties to such instruments" (9:1). As can be seen from the previous discussions describing differences between Government and private contracting, these rulings must be taken as generalities. In fact, F. Trowbridge Von Baur, a former General Counsel of the Navy Department stated in 1966 that the two rulings "can be accepted at face value only in a theoretical sense. The great difficulty is that from the practical

standpoint the sweeping concept of similarity between commercial and Government contracts simply is not borne out (9:1)."

As will bee seen in the following chapters, private contract documents, specifically the AIA's contract documents, have been changed to include provisions previously only found in Government contracts. For example, the unilateral change order was once only found in Government contracts, but is now a common provision in private contracts. The AIA's recent revision to the A201 incorporates a differing site condition clause which places the risk on the Owner much as the FAR clause places the risk on the Government. While there are still significant differences between private and Government contracts, those differences have shrunk considerably since the former General Counsel's statement.

CHAPTER III

AMERICAN INSTITUTE OF ARCHITECTS DOCUMENT A201

3.1 Scope of Review

This chapter reviews the AIA's most important construction contract document, the A201, General Conditions of the Contract for Construction. It will attempt to identify strengths and weaknesses of those specific articles which have the greatest effect on the construction process. Those articles are Article 4, Administration of the Contract; Article 7, Changes in the Work and Article 8, Time. They contain the provisions which are most often subject to disagreement and therefore most greatly affect the success of the project. In the next chapter, portions of the Navy's General Provisions, which are similar to these articles, will be reviewed in relation to the A201. This chapter's review will also draw conclusions about the document's usefulness as it relates to an Owner's level of sophistication and project scope. Specific recommendations will not normally be made, but areas with which contracting parties should be familiar before entering into an agreement will be identified.

In order to properly evaluate any construction contract provision, an awareness of the necessary elements of quality contract documents is required. First, the final product and existing conditions must be clearly defined with unambiguous plans and specifications. Next, the rights and responsibilities of all parties must be set forth in a fashion which does not cause confusion. Just as important is the equitable division of those rights and responsibilities. Finally, a good document must consider the realities of the construction process,

anticipate likely problems and establish working rules which best deal with those realities and recurring problems.

3.2 Drafting of the A201

In the previous chapter, some insight into Government contracting was gained by investigating the origin of the Government contract's provisions. Likewise, it is worthwhile to look into the origin of the AIA's construction contract document.

The AIA A201 is drafted by a committee of volunteers and published after approval by the Board of Directors on a 10 year cycle or more often when necessary. It was revised six times during the 1960's and 1970's due to the liability explosion of that period. The AIA's stated drafting principles are 1) to establish standardized legal forms to enhance the stability of construction legal transactions, 2) to provide assistance to users who cannot always obtain legal counsel, 3) to give Architects a direct role in setting the terms of contractual relationships and 4) to strive for balanced and fair documents (8:8-9).

The AIA maintains it achieves those principles by:

1) Conforming to common law and statute
2) Allocating risk and responsibilities
   - to the party best able to control them
   - to the party best able to protect against the unexpected cost
   - to the Owner when no one can control the risk
3) Seeking industry input to obtain consensus
   - to publish documents subject to uniform interpretations

- to reflect industry custom and practice

Some believe placing all entrepreneurial risk on the Owner when no one can control that risk is not equitable since the Contractor is also an entrepreneur. Some also maintain that giving the Architect a direct role in setting the terms of contractual relationships actually means protecting the Architect (8:9).

As will be pointed out later, AIA's third drafting principle took precedence over and in some cases to the detriment of their fourth principle during the latest A201 revision in 1987. Considering AIA's belief that Architect's liability has unjustifiably expanded and that AIA's drafting committee meets with legal and insurance counsels, it is not surprising that the revision clearly sought to reduce the Architect's liability in construction contracts. AIA maintains their pursuit of fair documents is illustrated by their efforts to obtain input from all parties. For instance, they reconcile differences with the Associated General Contractors (AGC) and obtain their endorsement. However, the lack of significant Owner input, which is difficult to obtain, raises the question of how fair the document is to the Owner (8:7-8).

Not one word withstanding these concerns, the AIA's stated drafting principles are sensible and, for the most part, equitable. Therefore, this review will, from time to time, refer back to those principles to see if their specific provisions are compliant. Since no equivalent Government drafting principles were found, the next chapter will also use these principles as a gauge when evaluating Government contract provisions.

3.3 Article, 4, Administration of the Contract

The AIA has established the Architect as the Owner's representative and administrator of the contract. He is responsible for visiting the job site at appropriate intervals in order to become generally familiar with the work to determine if the work generally conforms with the contract requirements. He does not have control over and is not responsible for construction methods or safety as these have been established as solely the Contractor's responsibility.

He reviews and certifies applications for payment and reviews and approves shop drawings, product data and samples. The shop drawing reviews are solely for the limited purpose of checking for conformance with information given and the design concept expressed. Responsibility for accuracy and completeness remains with the Contractor. The Architect prepares Change Orders, Construction Change Directives (CCD's) and may authorize minor changes. He conducts substantial completion and final inspections and decides on all matters concerning performance under and requirements of the contract. His decision is subject to arbitration with the exception of a decision relating to aesthetic affect which is final if consistent with the expressed intent of the contract.

Was the AIA wise in assigning the above functions to the Architect? Unquestionably they must be accomplished in order to successfully complete a contracted construction project. Traditionally, the Architect has always had a major role in construction administration. The recent revision of A201 has actually broadened the Architect's authority while attempting to severely limit his responsibility. At face value this does not appear equitable. It is a normally accepted maxim that authority and responsibility should be assigned together.

An example clearly illustrating this inequity is Paragraph 4.2.6. The Architect is being paid to perform contract administration. Part of his duties as the Owner's representative is to visit the site and reject defective work. Suppose he fails to properly execute his duties by rejecting work which was not defective. If the Contractor performs additional work because of this improper rejection, he has been harmed by the Architect. Under common law the Architect would clearly be liable, however, Paragraph 4.2.6 states any rejection shall not give rise to a duty or responsibility of the Architect.

The disclaimer in Paragraph 4.2.12, which discusses decisions by the Architect, closely parallels the above example. It states the Architect will not be liable for results of interpretations or decisions rendered in good faith. While AIA maintains their documents strive to allocate risk and responsibilities to the party best able to control them, the two examples above clearly allocate those risk and responsibilities to the party least able to control them, the Owner.

The attempts by the AIA to distance the Architect from responsibility for shop drawings and inspections of work appear justified. The failure of the Architect to find a Contractor's mistake, whether in the shop drawings or work, should not be grounds for Architect liability or a change from the contract documents. That risk should remain with the party best able to control it, the Contractor who is performing the work and preparing the shop drawings.

There has been much criticism of the disputes process established by A201 and the Architect's role as both interpreter and judge. Many reject the A201 because of the unwieldy and complicated disputes process, while others question whether the Architect should be placed in the position as judge, considering his interests as the designer of the project (8:19).

While AIA has attempted to make clear guidelines to speed up disputes resolution, one just has to look at the claims process flow chart provided in the instructions for the A201 (see Appendix B) to realize it could easily slow it. According to Paragraph 4.5.1, the Contractor may have to wait 45 days for the Architect's decision before requesting arbitration. It is also possible for the Architect to be required to render the same decision 3 times prior to arbitration. Suppose the Contractor finds the omission of an important element of construction and requests the Architect's determination in accordance with Paragraph 4.2.11. If the Contractor disagrees with the Architect's determination, he must now submit a claim in accordance with Paragraph 4.4.1. More than likely, the Architect's decision will be unchanged, however, Paragraph 4.4.3 requires the Contractor to make notification that his initial claim stands, to which the Architect must respond again with his final decision.

One Owner, realizing the provision's possible flaws, stated, "The construction process, to be efficient and effective, requires the daily cooperation of the parties and the on-going resolution of disputes and questions of interpretation of the contract documents. If a dispute cannot be settled in the normal course of the process, one wonders how the institutionalization of this claims resolution procedure can be effective (3:453)."

The disputes procedure is complicated and requires excessive documentation, but the Architect's role in the procedure may be a larger problem. The Architect may have difficulty in remaining impartial and objective. He may be hesitant to admit his error in design if it could prove costly. His allegiance to the Owner and desire for future work are certainly important factors. He is also called upon to judge his own interpretations, a clear conflict

of interest. Furthermore, paragraph 4.3.1 does not limit the subject matter which is reviewable by the Architect. Notwithstanding concerns about his impartiality and although he may be well qualified to review technical matters, he most probably is not qualified to review legal matters.

Th Architect's decision is subject to arbitration with the exception of matters relating to aesthetic effect which are final if consistent with the intent expressed in the contract documents. It is doubtful that a claim relating to aesthetics would exist if the claimant thought the Architect's decision was consistent with the intent of the contract. Therefore, it seems likely a claim relating to aesthetic effect could also be subject to arbitration. Most Owners say they delete the arbitration clause from A201. Many believe arbitration works well for small and simple claims of a technical nature, however, most construction disputes are complex and require extensive pre-trial discovery. Without discovery, the Owner is at a severe disadvantage because the Contractor typically keeps better records (3:596).

Article 4 wisely anticipates the negative effect disputes may have on progress by providing for continued contract performance until final resolution of a claim. However, since the wording of Paragraph 4.3.4 requires performance of "contract work" only, it is questionable whether the Contractor must perform disputed work which he believes is not part of the contract. If his interpretation is judged correct, he would have been within his rights in refusing to perform the work not in the contract and would also be able to recover delay damages.

Some provisions in Article 4 are flexible and fair, such as Paragraphs 4.3.6 and 4.3.7 which allow the Contractor to make claim for items such as added

work for concealed conditions and delays as long as notification is made within 21 days after the cause occurs or is discovered. The Contractor is rightly paid for additional work beyond his control while the notice requirement protects the Owner from receiving long lists of claims at project completion after the Contractor has found he lost money.

Several provisions in Article 4 have problems. The Owner should carefully consider whether he wants arbitration, can work with the complicated claims process, agrees to accept liability rightfully belonging to the Architect and believes the Architect is best suited to be interpreter of the contract.

3.4 Article 7, Changes in the Work and Article 8, Time

Changes in the work may be accomplished by Change Order, Construction Change Directive (CCD) or an order for a Minor Change in the Work. Change Orders are prepared by the Architect and signed by the Owner, Contractor and Architect when all agree on the change in work and the change in contract sum and time. The CCD is used in the absence of total agreement on the terms of a Change Order. It is a written order, prepared by the Architect and signed by the Owner and the Architect, directing a change in work and stating a proposed basis for adjustment of contract sum and time. The work ordered must be within the general scope of the contract. A Minor Change in the Work, which does not involve an adjustment in contract sum or time, is effected by a written order from the Architect.

Again the AIA has vested the Architect with superior authority relative to changes in work. While the Owner's signature is required on the Change Order and CCD and the Contractor's signature is required on the Change

Order, only the Architect's signature is required on all three types of changes. He can order a Minor Change in Work without consent from the Owner. If the Contractor carries out a Minor Change in Work promptly, as required in Paragraph 7.4, and makes notification within 21 days that the change actually involved time and money, the Owner could end up paying for a change he did not want (6:8). While Paragraph 4.3.7 requires notification of increased costs prior to execution of the work, there is no notification requirement for increased time prior to execution. This consequently raises the question of delay damages. A mechanism to order minor changes is required for efficient management of construction and AIA has done well to provide one, but an Owner should be careful with how it is used.

The methods for determining an adjustment of contract price for a Change Order are defined in Paragraphs 7.3.3 and 7.3.6, but no method is provided for the adjustment of time. This problem is exacerbated by the skimpy progress schedule requirements in Paragraph 3.10. The lack of a requirement for a specific schedule type will make determining the critical path difficult. Even if the critical path is determined, both Articles 7 and 8 are silent as to who owns the float. While many believe float is for the benefit of the project and a delay must be on the critical path to justify a time extension (8:488), negotiations on this issue may prove difficult.

Paragraph 8.3.3 states the right to a time extension does not preclude recovery of damages for the delay. Also, Paragraph 4.3.8.1 requires a claim for time to include costs for the delay. While not clearly stated, the above implies the Owner will pay damages for delays caused by unusually severe weather (8:340). This does not appear to be consistent with AIA's contention that it

assigns risk to the party best able to control it or protect against the unexpected costs. While the Contractor cannot control the weather, he is best able to adjust his schedule to minimize the weather's impact. However, if the Owner is liable for weather delays, the Contractor will have little incentive to mitigate the cost.

The CCD is a useful tool for the Owner and Architect in that required work may commence prior to total agreement. The lack of agreement would most likely center on the adjustment to contract sum. The Contractor lost substantial bargaining power with the institution of the CCD. He can no longer stand firm on his proposed price knowing the Owner will eventually accept it because of the Owner's unwillingness to allow further delay and increased costs. On the other hand, the Contractor is protected from being forced to construct something outside the scope for which he bargained. He must agree to do additional work of that nature by signing a Change Order.

The methods for determining the price for a CCD are thought to be confusing by many (8:342). The CCD would most often be used when there was not time to negotiate the price or negotiations on price had failed. With this in mind, it makes little sense to include the price determination methods described in Paragraphs 7.3.3.1 and 7.3.3.2 which require agreement on price. If there was agreement, the change should have been accomplished by Change Order. Paragraph 7.3.6 provides a method of pricing when the Contractor does not respond promptly or disagrees with the method originally used by the Architect. This also seems to be an unnecessary step. If negotiations have not yet been held, they should be held at this point. If they have failed, the Architect

should have already used the procedure in 7.3.6 which was to be considered under Paragraph 7.3.3.

Paragraph 7.3.7 protects the Contractor's overhead and profit for changes resulting in the deletion of work (8:346). This appears justified in that changes, even deletions, usually do not result in less overhead being required. This paragraph also protects the Owner in the event of a change involving both added and deleted work, as the costs are to be netted prior to applying mark-ups. Some have recommended inclusion of formulas to determine overhead and profit for all changes (8:345). This would certainly speed up negotiations. Others are concerned that payments may be made for undisputed parts of the CCD. This could result in payments for undisputed additions, but no credit for disputed deletions until the issue is settled (3:16).

Both Owner and Contractor should be aware of an additional aspect of the change provisions. Paragraph 4.3.3 allows additional claims on previously implemented Change Orders if submitted in a timely fashion. This helps the Contractor in collecting for any ripple effect from a change not easily identified prior to starting the work. It could be costly to an Owner who thinks he has negotiated a fair price, but then sees his costs multiplying. Both parties should be aware of the ramifications of this clause during negotiations and the Change Order should clearly state the terms of the agreement made during those negotiations.

CHAPTER IV

U.S. NAVY CONSTRUCTION CONTRACT GENERAL PROVISIONS

4.1 Scope of Review

As stated earlier, the General Provisions of the Navy's construction contact include all applicable FAR and DFARS clauses, whether included by reference or not, the General Paragraphs and Additional General Paragraphs. The review of these provisions will be generally limited to the clauses and paragraphs dealing with administration of the contract, disputes, changes and time. Again, strength and weaknesses of each provision will be identified. The provisions will also be compared to the equivalent A201 provisions in order to find important disparities. Also, when warranted, the AIA's drafting principles will be used as a measure of the provision's equity and effectiveness.

4.2 Administration of the Contract

Paragraph 1.4, Government Representatives, of the General Paragraphs establishes the Officer in Charge of Construction (OICC) as the authorized representative of the Contracting Officer. He has complete charge of the contract except in connection with the disputes clause, for which the authority remains with the Contracting Officer. Therefore, in essence the contract is administered by an employee of the Owner as compared to the AIA's contract where the Architect is responsible for most administrative functions. Furthermore, the Navy has extensive experience in construction and can

therefore be considered a sophisticated Owner as compared to the novice who would most likely use the AIA's document. This creates a significantly different contractual environment which, from a Contractor's perspective, will have both advantages and disadvantages.

Combined, the Contracting Officer and the OICC, decide on all matters relating to contract execution. They are Naval Officers with vast construction experience and have received significant training in contract administration and contract law. The Contracting Officer is advised by legal and contract administrative staffs also well versed in the field of construction. It therefore seems likely that the administers of the Navy construction contract will be eminently more qualified to decide on all contractual matters than is the Architect. While a Contractor may look upon this situation as an opportunity to receive fair treatment, he may also feel intimidated to assert his rights.

Earlier, it was stated that the Architect's judgement may be impaired, considering his business interests as the designer of the project. Admitting a design error which results in increased costs would result in liability for the Architect. This need not be a concern on Navy projects since the CICC did not design the project. While he is responsible for safeguarding public funds, increased costs to the Government due to design problems may be recovered from the designer.

The Government's tendency to delegate only limited authority to its officials can create confusion and frustration to a Contractor who is used to the AIA document and the Architect being the sole representative of the Owner. He may be referred to an inspector, a contract administrator, a project manager or the OICC and rightly feel he is getting the runaround. The project manager

usually handles routine administrative functions and is responsible for the efficient execution of the contract. Often the project manager is a youthful and inexperienced Naval Officer. One of the most frequent criticisms from Navy Contractors is that they feel they have been tasked with training these officers which negatively impacts their profits.

The Contractor's administrative requirements under a Navy contract are more cumbersome and confusing than the A201's requirements. Most are mandated by FAR and little can be done without Congressional action. Many Contractors avoid Government work for this reason. However, those Contractors who would favor private contracting under the provisions of the A201 should consider the Architect's significant authority and disproportionately limited responsibility. He may find himself in the unpleasant situation of seeking damages, caused by the Architect, from a naive Owner. As will be seen later in this chapter, most provisions in the Navy contract clearly state costs caused by incorrect decisions, negligence or inaction on the part of the Government will be born by the Government. In that sense, the Navy's contract documents more closely comply with the AIA's drafting principles of allocating risk to the party best able to control that risk.

4.3 Inspection of Construction

The FAR clause is similar to the A201 provision relating to inspection in that both leave the responsibility for satisfactory work with the Contractor regardless of whether the work was inspected. The FAR clause is more restrictive in that it states the Contractor shall furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such

safe and convenient inspections and tests as may be required by the Contracting Officer.

Both documents also allow for inspection of already completed work by removing it or tearing it out. In both, the Contractor pays for the removal and replacement if the work was found to be unsatisfactory. However, if the work is found to be compliant, the A201 states the Owner shall bear the cost of uncovering and replacing the work even though the Architect made the decision to uncover it and was not required to consult the Owner prior to making that decision. The FAR clause states that if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including an extension of time if there was a delay.

4.4 Disputes

The disputes clause now found in Government contracts defines a claim as a written demand or assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a certain sum, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. The clause continues that a claim arising under a contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. Prior to the Disputes Act of 1978, claims arising under the contract and claims relating to the contract (breach of the contract) were mutually exclusive as to how they were pursued. Claims arising under the contract were required to be presented to the Contracting Officer and finally to an agency Board of Contract Appeals, while

claims for breach had to be filed in the U. S. Court of Claims or to the Comptroller General (9:4).

The new disputes act confers jurisdiction in the Boards of Contract Appeals for both types of claims. The disputes clause requires the Contractor to submit his claim in writing to the Contracting Officer for a written decision. That claim must be certified as accurate and complete if over $50,000. The written decision must be rendered within 60 days if the claim is under $50,000. If the claim is over $50,000, the Contracting Officer must notify the claimant within 60 days of when that decision will be made. The Contracting Officer's written decision is final unless the Contractor appeals to the appropriate Board of Contract Appeals or files suit in the U.S. Court of Claims. The Contractor must appeal to the Board within 90 days of the Contracting Officer's written decision or file suite in court within 12 months. The clause also requires the Contractor to proceed diligently with performance of the contract, pending final resolution of any request for relief, claim, appeal or action arising under the contract and comply with any decision by the Contracting Officer (5:16.1-16.4). The disputes process for Government contracts is schematically illustrated in Appendix C.

The Government disputes clause allows for immediate submission of a claim to the Contracting Officer for a written decision and, if the claim is under $50,000 and properly prepared, he will receive that decision, based solely on the merits of the claim, as submitted within 60 days. While 60 days is an extremely long time to wait for a decision, considering the average duration of a construction project, the Government clause disallows the prolonged exchange of correspondence and further delays possible with the A201. In reality,

however, prior to a dispute becoming a claim as defined by the Government clause, there normally will be correspondence and discussion addressing that dispute, much as would be the case under the scheme established by the A201. The difference is that the A201 establishes the Architect as the party who makes all decisions. He is party to the initial disagreement and renders the final decision on that same disagreement.

In Navy contract offices, the initial disagreement will most likely be between the Contractor and the inspector. Unlike the private Contractor, who then has to continue pleading his case to the same party, the Government Contractor can successively request relief from the project manager, the OICC and then the Contracting Officer, thereby increasing the chances for settlement. A noteworthy aspect of the Disputes Act of 1978 is that it obligates the Contracting Officer to make every reasonable attempt to settle the dispute in order to avoid litigation.

In Government contracting, the Contractor has the option to take his case to the appropriate Board of Contract Appeals or to Claims Court. Either option should prove to be unattractive in the sense that a decision will not be forthcoming in a timely fashion. If the claim is over $50,000, the process could be further delayed at its conception, as the Contracting Officer is not obligated to render a decision in any specified time, but to only inform the Contractor when the decision will be made. Presumably, a Contractor would have to wait only a reasonable period of time for the decision prior to seeking relief elsewhere. The lack of any provisions for arbitration in the disputes clause and the time and money involved with going to a board or court should certainly be effective motivators for both parties to attempt to settle their differences.

As discussed in the previous chapter, a Contractor may not be obligated to perform disputed work which he believes is not part of the contract when the A201 is used. There is no such ambiguity in the Government disputes clause as the final provision requires the Contractor to comply with any decision by the Contracting Officer until the disputes is settled. However, this continued performance would not be required if the Government had breached its contract because the clause specifically requires continued performance despite claims arising under the contract only and not with claims relating to the contract.

Finally, it is generally agreed that claims of $50,000 or less are more expeditiously and economically adjudicated before the agency Board of Contract Appeals while there are many things to consider with claims over $50,000 (2.592). The agency boards also appear to have the confidence of both Contractors and Contracting Officers (9:7).

4.5 Changes

The FAR changes clause allows the Contracting Officer to make changes in the work, by written order or orally, within the general scope of the contract, including changes in the specifications (including drawings and designs), in the method of performance, in the Government furnished items specified and in directing acceleration in the performance of the work. Paragraph 1.6 of the General Paragraphs also states that no oral statement by any person other than the Contracting Officer or his representative will in any manner or degree modify or otherwise affect the terms of this contract.

The A201 changes article has no equivalent provision for oral modifications. Essentially, the A201 and FAR change clauses are contrary to the historical trend of the courts to disallow oral modifications in pubic contracts but allow them in commercial contracts. Furthermore, the FAR changes clause also states that "any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order." This provision has effectively resulted in liberal allowance for constructive changes in Navy contracts as long as prompt notice is made. It is important for Contractors to realize that, as one lawyer suggested, "with the addition of the changes clause. . ., the contracts expressly provide for the presenting of a fair number of claims that arise to the Contracting Officer (9:7)."

In presenting those claims, the Contractor should be familiar with the notification requirements in the FAR clause. Paragraph (e) of the clause states the Contractor must assert its right to an adjustment under this clause within 30 days after a change order is issued or a constructive change is made. Paragraph (d) states that the Contractor cannot recover for any costs arising more than 20 days prior to his furnishing notice as prescribed. The 20 day limitation is usually not waivable, however, when a Contractor has not complied with the specific notice requirements, but the Government is aware of those events giving rise to the claim and has not materially suffered prejudice by the lack of notification, it is not likely that the notice provision will be enforced (2:366).

A confusing aspect of the FAR clause's notification requirements is that a Contractor is required to inform the Contracting Officer within 30 days of the change, but is barred from recovering any costs incurred more than 20 days prior to that notification. It is therefore possible for costs incurred during the first 10 days to be unrecoverable. This disparity is confusing and unwarranted.

The Contracting Officer also has the right to unilaterally make changes to the contract, within the general scope of the contract, just as is the case with the A201. This provision is another example of the shrinking differences between private and Government contracts. Several years ago it would be extremely rare to find such a provision in an ordinary business contract. The FAR clause categorically provides that the Contractor is legally obligated to proceed with the contract as changed. However, experience seems to indicate that the provision is not entirely understood by Contractors as there have been many court rulings upholding terminations for default because the Contractor refused to perform the additional work (9:5).

A significant problem with the FAR changes clause is the lack of any abbreviated procedure to accomplish minor changes which do not involve time or money. While Navy contracting offices have established standardized procedures to accomplish these "field changes", the lack of a contractually defined method often results in Contractors refusing to proceed with the work without a formal change order. This can result in loss of efficiency and delays to construction.

4.6 Differing Site Conditions and Site Investigations

The FAR Differing Site Conditions clause allows for changes in the construction contract for additional work caused by subsurface or latent physical conditions at the site which differ materially from those indicated by the contract and by unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract. This clause properly places the risk for unknown conditions on the Government as it is the Government who has the greatest ability to control that risk by thoroughly investigating site conditions prior to advertising the contract and accurately reflecting these conditions in the contract. A Contractor has significantly less time to make a detailed site investigation during bid preparation. In its latest revision, the AIA has included a provision in the A201 which closely parallels the Government clause in intent and effect (2:318)

The only notice requirement specified in the FAR differing conditions clause is that written notice must be made to the Contracting Officer prior to disturbing the unknown conditions. The notice requirements specified in the changes clause may be applicable, but differing site conditions are not specifically addressed. Therefore, a Contractor may understandably believe that he will be compensated for increased costs due to differing conditions he never disturbed, regardless of when he made notification, while a Contracting Officer may reject his claim for lack of timely notification. Notwithstanding who would ultimately prevail, the clause should specify a number of days in which to make the notification as does the A201.

The FAR Site Investigation and Conditions Affecting the Work clause requires the Contractor to take steps reasonably necessary to ascertain the nature and location of the work, and to investigate and satisfy itself as to the general and local conditions which can affect the work. This clause and the very similar A201 provision make recovery under the differing site condition clauses more difficult because they may in effect estep a Contractor from arguing that actual conditions were different than what he anticipated or should have anticipated. He is bound to make his own reasonable investigation or bear the responsibility for losses due to this failure to investigate. This strict view is more likely to be applied by the courts in a Government contract where the notion of protecting public funds is likely to override any equitable considerations that otherwise might serve to protect the Contractor (2:329-332).

Paragraph (b) of the FAR site investigation clause states the Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. This provision places risk on the Contractor unjustly. If the Contracting Officer makes information available to the Contractor, such as subsurface data in accordance with paragraph 1.2.3 of the Additional General Paragraphs, the Contractor should be able to rely on that information if it is needed in the development of his bid. If the information was needed and proves to be inaccurate, clearly the Government should be liable for the resulting costs. If the information was not needed, it should not have been provided.

4.7 Equitable Adjustments

The term "equitable adjustment" appears in many of the Government's adjustment clauses, however, its concept remains one of the larger unresolved issues in Government contracting. While, it is normally construed to mean a fair or reasonable arrangement or settlement in determining contract price and period of performance, the determination of what actually constitutes an equitable adjustment has not been specifically defined by the FAR (5:11.1).

The lack of any price determination guidelines for changes to Government construction contracts has caused recurring problems during negotiations. While the A201 specifically allows for only reasonable costs with reasonable overhead and profit applied, the Government provisions as to pricing changes have no such reference to reasonableness. Therefore, there are several documented approaches to measuring an equitable adjustment which have been the subject of litigation (5:11.2). They are listed below.

1) "Reasonable Value" - What the change should cost
2) "Specific Cost" - What the change will or did cost
3) "Total Cost" - Difference between original bid cost and actual cost of the work including the change
4) "Jury Verdict" - Using all available information to make a reasonable estimate
5) "Bruce Case" - Contractor's cost which was reasonably incurred

The method most widely accepted by the boards and courts is that which allows actual costs which were reasonable incurred (5:11.9). It would therefore be sensible to include such a statement in the Government contract in

order to avoid confrontation with Contractors who are not well versed in historical rulings.

The FAR changes clause specifically states that if any change causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of the work under the contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment. Paragraph 1.12 of the General Paragraph further states the Contractor shall include all types of adjustments in the total amounts to which the applicable clause entitles the Contractor, including, but not limited to, adjustments arising out of delays or disruptions caused by such change. It continues that the Contractor shall be deemed to have waived any adjustments to which he otherwise might be entitled and any increase in the amount additional to that requested.

These provisions specifically allow the Contractor to include costs due to any ripple effect of the change but also disallow any ripple effect not identified in his original request. This is in contrast to the A201 provisions discussed in Chapter II which allow additional claims for work previously changed by a negotiated Change Order. The ramifications of this difference to a Contractor who performs both Government and private work are significant.

There are no specific FAR guidelines on how overhead and profit are to be applied to the direct cost, as there are in the A201, but it is generally felt within the Government that a credit for both overhead and profit is due for deductive changes (5:11.12). Rarely do Contractors agree with this point of view and, as a result, disputes are common.

The amount of overhead to be applied is generally determined by using the Contractor's standard accounting practice of applying overhead as a percentage of direct costs. However, in some instances when a long delay occurs, the "Eichley Formula" has been used which applies the Contractor's historical daily overhead rate, for the contract being delayed, to the duration of the delay, whether work is performed or not.

The amount of profit is also left to negotiations for small changes. However, for changes over $100,000, FAR subpart 15.9 requires the use of the "Weighted Guidelines" approach. This approach bases profit on the type of work involved and provides a somewhat subjective method for calculating an appropriate rate.

4.8 Time

The FAR Schedules for Contraction Contracts clause does not require a specific type of schedule and no other provision defines how a time extension will be determined. As discussed in Chapter II, the lack of specific guidelines will make negotiations extremely difficult. The optional network schedule provision in the Additional General Paragraphs should be made mandatory for all but the smallest of projects. Interdependencies, impacts of delays and the critical path would then be apparent, thus allowing for more informed and objective negotiations.

Finally, in Government contracts, time extension for delays due to adverse weather, fires, floods, etc., are governed by the FAR Default clause. The clause does not provide for an increase in contract price for such delays. Therefore, in the absence of negligence of the part of the Government, the

Contractor can not recover his increased costs as is possible under the A201 (5:10.11). The FAR clause more equitably assigns risk in this case to the Contractor who has the resources to deal with the risk.

CHAPTER V

CONCLUSION

The A201 and the Government's General Provisions have attempted to clearly define risks and responsibilities relating to contract administration, disputes and changes in the work. While some believe the clarity of the overall A201 document is good, many believe that the lack of apparent Architect liability and the confusion and documentation requirements of the unwieldy disputes and changes processes create significant problems. One Contractor stated, "A201 presupposes that the Contractor has sophisticated in-house administration staff. It requires an extensive paper trail regarding scheduling, payment, price adjustment and claims resolution procedures (8:20)."

In a court decision, one judge wrote, "No project of this scope. . . could possibly be completed in accordance with the literal scheme envisioned by an Architect-drawn agreement. In truth, even the AIA standard contract would require a battery of Philadelphia lawyers on the firing line every day. Under it, everyone is liable save the Architect (8:24)".

While some provisions indicate AIA's desire for a fair document, such as both the Owner and Contractor having termination rights, the apparent lack of responsibility of the Architect should concern both the Owner and the Contractor. One Owner suggested inclusion of a general provision which would require the Architect and Contractor to jointly acknowledge that the work in the contract documents is constructible and, when constructed, will be in

accordance with applicable laws, statutes, building codes and regulations (3:459). While this would appear a reasonable requirement for the Architect, it is doubtful most Contractors would agree to make such a statement.

The Architect's authority as interpreter and judge in the disputes and changes process is too broad. His business concerns may cloud his judgment and possibly result in undue liability for the unsophisticated Owner. Face to face negotiations between the Owner and Contractor with consultation from the Architect may be more appropriate.

The A201 should be used for small contracts that are completely designed before they are awarded as a competitively bid, fixed price contract. The Owner should consider hiring a construction management firm to be his representative instead of the Architect. His interests may be better represented at a comparable cost.

The Government General Provisions are even more formalistic than the A201. While the Changes and Disputes clauses are less confusing than their A201 counterparts, the additional plans, submittals and certifications required by the myriad of social and economic clauses involve extensive effort from the Contractor.

The disputes process for Government contracts is likely to be more expensive and take much longer, if the dispute ends in litigation, due to the absence of an arbitration provision. However, the Contractor's chance of receiving objective and well informed treatment during the process is much greater in contracting with the Navy. Settlement of the dispute prior to litigation is also more likely.

Changes in Navy contracts will probably disrupt the Contractor's progress to a greater extent than in private contracts due to the Anti-Dificiency Act. Additionally, for large changes, his proposal is subject to significant scrutiny from audit agencies which may not have experience in pricing construction.

A Contractor should feel more comfortable with the allocation or risk in Navy contracts as it is generally done more equitably than in the A201. This in itself should result in fewer disputes and more efficient project execution.

There certainly are both advantages and disadvantages associated with the differences between Government and private construction contracting. Familiarity with the differences discussed will assist a Contractor in capitalizing on the advantages while minimizing the disadvantages.

APPENDIX A

SELECTED FAR CLAUSES,

GENERAL PARAGRAPHS

AND

ADDITIONAL GENERAL PARAGRAPHS

CONTRACT CLAUSES
CONSTRUCTION CONTRACT
(SEALED BIDDING PROCEDURES)

LAUSES INCORPORATED BY REFERENCE (APR 1984). This contract incorporates the ollowing clauses by reference, with the same force and effect as if they were iven full text. Upon request, the Contracting Officer will make their full ext available:

. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES (FAR). (FAR 52.252.2)

(End of clause)

1. FAR 52.202-1, Definitions (APR 1984) - Alternate I (APR 1984)

2. FAR 52.203-1, Officials Not To Benefit (APR 1984)

3. FAR 52.203-3, Gratuities (APR 1984)

4. FAR 52.203-5, Covenant Against Contingent Fees (APR 1984)

5. FAR 52.203-7, Anti-Kickback Procedures (FEB 1987)

6. FAR 52.204-2, Security Requirements Alternate II (APR 1984)

7. FAR 52.212-6, Time Extensions (APR 1984)

8. FAR 52.212-8, Defense Priority and Allocation Requirements (MAY 1986)

9. FAR 52.212-11, Variation in Estimated Quantity (APR 1984)

10. FAR 52.212-12, Suspension of Work (APR 1984)

11. FAR 52.214-26, Audit-Sealed Bidding (APR 1985)
(Applicable if award exceeds $100,000)

12. FAR 52.214-27, Price Reduction for Defective Cost or Pricing Data-Modifications-
Sealed Bidding (APR 1985)
(Applicable if award exceeds $100,000)

13. FAR 52.214-28, Subcontractor Cost or Pricing Data-Modifications-Sealed
Bidding (APR 1985)
(Applicable if award exceeds $100,000)

14. FAR 52.219-6, Notice of Total Small Business Set Aside (APR 1984)

15. FAR 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (JUN 1985)
(Applicable if award exceeds $10,000)

6. FAR 52.219-9, Small Business and Small Disadvantaged Business Sub-contracting
Plan Alternate I (APR 1984)
(Applicable if award exceeds $1,000,000)

7. FAR 52.219-13, Utilization of Women-Owned Small Business (AUG 1986)
(Applicable if award exceeds $25,000)

8. FAR 52.220-3, Utilization of Labor Surplus Area Concerns (APR 1984)

9. FAR 52.220-4, Labor Surplus Area Subcontracting Program (APR 1984)
(Applicable if award exceeds $500,000)

0. FAR 52.222-1, Notice to the Government of Labor Disputes (APR 1984)

1. FAR 52.222-3, Convict Labor (APR 1984)

2. FAR 52.222-26, Equal Opportunity (APR 1984)

3. FAR 52.222-4, Contract Work Hours and Safety Standards Act - Overtime Compensation (MAR 1986)

4. FAR 52.222-6, Davis-Bacon Act (FEB 1988)

5. FAR 52.222-7, Withholding of Funds (FEB 1988)

6. FAR 52.222-8, Payrolls and Basic Records (FEB 1988)

7. FAR 52.222-9, Apprentices and Trainees (FEB 1988)

8. FAR 52.222-10, Compliance with Copeland Act Requirements (FEB 1988)

9. FAR 52.222-11, Subcontracts (Labor Standards) (FEB 1988)

0. FAR 52.222-12, Contract Termination - Debarment (FEB 1988)

1. FAR 52.222-13, Compliance with Davis-Bacon and Related Acts Requirements (FEB 1988)

2. FAR 52.222-14, Disputes Concerning Labor Standards (FEB 1988)

3. FAR 52.222-15, Certification of Eligibility (FEB 1988)

4. FAR 52.222-27, Affirmative Action Compliance Requirements for Construction (APR 1984) (Applicable if award exceeds $10,000)

5. FAR 52.222-28, Equal Opportunity Preaward Clearance of Subcontracts (APR 1984) (Applicable if award exceeds $1,000,000)

6. FAR 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984) (Applicable if award exceeds $10,000)

7. FAR 52.222-36, Affirmative Action for Handicapped Workers (APR 1984)
(Applicable if award exceeds $2,500)

38. FAR 52.223-2, Clean Air and Water (APR 1984)
(Applicable if award exceeds $100,000)

39. FAR 52.223-3, Hazardous Material Identification and Material Safety Data (APR 1984)

40. FAR 52.225-5, Buy American Act - Construction Materials (APR 1984)

41. FAR 52.225-13, Restrictions on Federal Public Works Projects (APR 1988)

42. FAR 52.227-1, Authorization and Consent (APR 1984)

43. FAR 52.227-2, Notices & Assistance Regarding Patent & Copyright Infringement (APR 1984) (Applicable if award exceeds $25,000)

44. FAR 52.227-4, Patent Indemnity - Construction Contracts (APR 1984)

45. FAR 52.228-1, Bid Guarantee (APR 1984)
(Applicable if award exceeds $25,000)

46. FAR 52.228-2, Additional Bond Security (APR 1984)

47. FAR 52.228-5, Insurance-Work on a Government Installation (APR 1984)
(Applicable if award exceeds $25,000)

48. FAR 52.229-3, Federal, State, and Local Taxes (APR 1984)
(Applicable if award exceeds $25,000)

49. FAR 52.232-5, Payments Under Fixed-Price Construction Contracts (AUG 1987)

50. FAR 52.232-17, Interest (APR 1984)

51. FAR 52.232-23, Assignment of Claims (JAN 1986)
(Applicable if award exceeds $1,000)

52. FAR 52.232-25, Prompt Payment (FEB 1986)

53. FAR 52.233-1, Disputes (APR 1984)

54. FAR 52.233-3, Protest After Award (JUN 1985)

55. FAR 52.236-2, Differing Site Conditions (APR 1984)

56. FAR 52.236-3, Site Investigation and Conditions Affecting the Work (APR 1984)

57. FAR 52.236-5, Material and Workmanship (APR 1984)

58. FAR 52.236-6, Superintendence by the Contractor (APR 1984)

59. FAR 52.236-7, Permits and Responsibilities (APR 1984)

60. FAR 52.236-8, Other Contracts (APR 1984)

61. FAR 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (APR 1984)

2. FAR 52.236-10, Operations and Storage Areas (APR 1984)

3. FAR 52.236-11, Use and Possession Prior to Completion (APR 1984)

4. FAR 52.236-12, Cleaning Up (APR 1984)

5. FAR 52.236-13, Accident Prevention (APR 1984) -
Alternate I (APR 1984)

6. FAR 52.236-14, Availability and Use of Utility Services (APR 1984)

7. FAR 52.236-15, Schedules for Construction Contracts (APR 1984)
(Applicable if award exceeds $25,000)

8. FAR 52.236-17, Layout of Work (APR 1984)

9. FAR 52.236-21, Specifications and Drawings for Construction
(APR 1984)

0. FAR 52.243-4, Changes (AUG 1987)
(Applicable if award exceeds $25,000)

1. FAR 52.244-1, Subcontracts (Fixed-Price Contracts) (APR 1985)
(Applicable if award exceeds $500,000)

2. FAR 52.245-1, Property Records (APR 1984)

3. FAR 52.245-2, Government Property (Fixed-Price Contract) (APR 1984)
(Applicable if Government Furnished Property Exceeds $50,000 in
value)

4. FAR 52.245-3, Indentification of Government Furnished Property
(APR 1984)

5. FAR 52.245-4, Government-Furnished Property (Short Form) (APR 1984)
(Applicable if Government Furnished Property is less than $50,000 in
value)

6. FAR 52.246-12, Inspection of Construction (JUL 1986)

7. FAR 52.246-21, Warranty of Construction (APR 1984) - Alternate I
(APR 1984)

8. FAR 52.247-64, Preference For Privately Owned U.S.
Flag Commercial Vessels
(Alternate II) (APR 1984)

9. FAR 52.248-3, Value Engineering-Construction (APR 1984)
(Applicable if award exceeds $100,000)

0. FAR 52.249-1, Termination for Convenience of the Government
(Fixed Price) (Short Form) (APR 1984)
(Applicable if award is less than $100,000)

1. FAR 52.249-2, Termination for Convenience of the Government
(Fixed-Price) Alternate I (APR 1984)
(Applicable if award exceeds $100,000)

2. FAR 52.249-10, Default (Fixed-Price Construction) (APR 1984)

I. DEPARTMENT OF DEFENSE FEDERAL AQUISITION REGULATION SUPPLEMENT (DFARS) LAUSES INCORPORATED BY REFERENCE

83. DFARS 52.219-7000, Small Business and Small Disadvantaged Business Subcontracting Plan (Master Plans) (APR 1984)

84. DFARS 52.225-7012, Preference for Domestic Specialty Metals (OCT 1980)

85. DFARS 52.231-7000, Supplemental Cost Principles (APR 1984) (Applicable if award exceeds $25,000)

86. DFARS 52.233-7000, Certification of Requests for Adjustment or Relief Exceeding $100,000 (FEB 1980) (Applicable if award exceeds $100,000)

87. DFARS 52.236-7000, Composition of Contractor (JAN 1965)

88. DFARS 52.236-7001, Modification of Proposals - Price Breakdown (APR 1968)

89. DFARS 52.236-7002, Contract Drawings, Maps and Specifications (JAN 1965)

90. DFARS 52.236-7005, Salvage Materials and Equipment (JAN 1965)

91. DFARS 52.236-7006, Misplaced Material (JAN 1965)

92. DFARS 52.236-7007, Identification of Employees (JAN 1965)

93. DFARS 52.242-7003, Certification of Overhead Costs (MAR 85)

94. DFARS 52.243-7001, Pricing of Adjustments (APR 1984)

(6) An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if an improperly taken discount for prompt payment was not corrected within 15 days after the expiration of the discount period. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date with the Contractor is paid.

(b) Contract Financing Payments. (1) For purposes of this clause, if applicable, "contract financing payment" means a Government disbursement of monies to a Contractor under a contract clause or other authorization prior to acceptance of supplies or services by the Government, other than progress payments based on estimates of amount and value of work performed. Contract financing payments include advance payments.

(2) If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the (insert day as prescribed by Agency head; if not prescribed, insert 30th day) day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified. For advance payments, loans, or other arrangements that do not involve recurrent submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer. Contract financing payments shall not be assessed an interest penalty for payment delays. (FAR 52.232-25)

(End of Clause)

55. DISPUTES (APR 1984)

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim", as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a certain sum, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph d.(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding $50,000, the Contractor shall submit with the claim a certification that--

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(3)(i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by--

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of $50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer. (FAR 52.233-1)

(End of clause)

56. PROTEST AFTER AWARD (JUN 1985)

(a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor requests an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the request at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause. (FAR 52.233-3)

(End of clause)

57. DIFFERING SITE CONDITIONS (APR 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract. (FAR 52.236-2)

(End of clause)

58. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost including, but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract. (FAR 52.236-3)

(End of clause)

59. MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable. (FAR 52.236-5)

(End of clause)

60. SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor. (FAR 52.236-6)

(End of clause)

61. PERMITS AND RESPONSIBILITIES (APR 1984)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract. (FAR 52.236-7)

(End of clause)

62. OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees. (FAR 52.236-8)

(End of clause)

63. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

68. AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all temporary connections, distribution lines, meters, and associated paraphernalia. (FAR 52.236-14)

(End of clause)

69. SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract. (FAR 52.236-15)

(End of clause)

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, not from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

(h) This clause shall be included in all subcontracts at any tier. (FAR 52.236-21)

(End of clause)

72. CHANGES (AUG 1987)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes -

(1) In the specifications (including drawings and designs);
(2) In the method or manner of performance of the work;
(3) In the Government-furnished facilities, equipment, materials, services, or site; or
(4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the

Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract. (FAR 52.243-4)

(End of clause)

73. SUBCONTRACTS (FIXED-PRICE CONTRACTS) (APR 1985)

(a) This clause does not apply to firm-fixed price contracts and fixed-price contracts with economic price adjustment. However, it does apply to subcontracts resulting from unpriced modifications to such contracts.

(b) "Subcontract," as used in this clause, includes but is not limited to purchase orders, and changes and modifications to purchase orders. The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if the Contractor does not have an approved purchasing system and if the subcontract -

(1) Is to be a cost-reimbursement, time-and-materials, or labor-hour contract estimated to exceed $25,000 including any fee;
(2) Is proposed to exceed $100,000; or
(3) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services that in the aggregate are expected to exceed $100,000.

(c) The advance notification required by paragraph (b) above shall include
(1) A description of the supplies or services to be subcontracted;
(2) Identification of the type of subcontract to be used;
(3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;
(4) The proposed subcontract price and the Contractor's cost or price analysis;
(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;
(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and
(7) A negotiation memorandum reflecting -

(d) Upon completing this contract, the Contractor shall follow the instructions of the Contracting Officer regarding the disposition of all Government-furnished property not consumed in performing this contract or previously delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as directed by the Contracting Officer.

(e) If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished." respectively. (FAR 52.245-4)

(End of clause)

78. INSPECTION OF CONSTRUCTION (JUL 1986)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not--

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) below.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements,the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.
(FAR 52.246-12)

(End of clause)

79. WARRANTY OF CONSTRUCTION (APR 1984)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplies at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of-

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(k) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(l) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(m) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents. (FAR 52.249-2)

84. DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if -

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract. (FAR 52.249-10)

(End of clause)

II. DEPARTMENT OF DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS) CLAUSES INCORPORATED BY REFERENCE-CONSTRUCTION CONTRACT (SEALED BIDDING PROCEDURES)

85. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (FEB 1988)

(a) Wherever in the clause of this contract entitled "Small Business and Small Disadvantaged Business Subcontracting Plan", FAR 52.219-9, the term "small disadvantaged business" is used, such term shall be deemed to include (in addition to small disadvantaged business conerns), Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs) as those terms are defines at DOD FAR Supplement 26.7002. Lists of qualifyting HBCUs and MIs are published periodically by the U.S. Department of Education, and are available from the Contracting Officer.

(b) In addition, master plans referred to in FAR 52.219-9 must be approved by the Government's cognizant Contract Administration Office. (DFAR 52.219-7000 FEB 1988)

(End of clause)

86. PREFERENCE FOR DOMESTIC SPECIALTY METALS (OCT 1980)

(a) The Contractor agrees that any specialty metals (as hereinafter defined) furnished by it or purchased by it for direct incorporation in any article delivered to the Government under this contract shall have been melted in the United States, its possessions, or Puerto Rico; Provided, That this

(d) In those situations where no claim certification for the purposes of Section 813 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will be deemed to comply with both statutes. (DFARS 52.233-7000)

(End of clause)

91. COMPOSITION OF CONTRACTOR (JAN 1965)

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severely liable hereunder. (DFARS 52.236-7000)

(End of clause)

92. MODIFICATION PROPOSALS - PRICE BREAKDOWN (APR 1968)

The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefor shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.
(DFARS 52.236-7001)

(End of clause)

93. CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS (SEP 1987)

(a) One set of sepia of large scale (half-size optional) contract drawings, maps and specifications will be furnished the Contractor without charge except applicable publications incorporated into the technical provisions by reference. Additional sets will be furnished on request at the cost of reproduction. One set of reproducibles will be furnished the Contractor on a one-time basis in lieu of the above contract drawings at the option of the Contracting Officer. The work shall conform specifications and to the following contract drawings identified on the following index of drawings

Title	File	and	Drawing No.

(b) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(c) The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall in general govern small scale drawings. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby. (DFARS 52.236-7002)

(End of Clause)

SECTION 01010

GENERAL PARAGRAPHS (A)

PART 1 - GENERAL

1.1 GENERAL INTENTION: It is the declared and acknowledged intention and meaning to provide and secure [_____ (B)
_____
_____
_____
_____
_____], complete and ready for use.

1.2 GENERAL DESCRIPTION: The work includes [_____ (C)
_____
_____
_____
_____] and incidental related work.

1.3 LOCATION: The work shall be located at the [_____], approximately as shown. The exact location will be indicated by the Contracting Officer.

1.4 GOVERNMENT REPRESENTATIVES:

(a) The work will be under the general direction of an officer of the Civil Engineer Corps, United States Navy or another officer or representative of the Government, as Resident Officer in Charge of Construction, referred to as the "ROICC" and designated in block 26 of Standard Form 1442. Except in connection with the "Disputes" clause, the Officer in Charge of Construction will be the authorized representative of the Contracting Officer and will have complete charge of, and exercise full supervision of, the work so far as it affects the interest of the Government. For the purposes of the "Disputes" clause, the "Contracting Officer" will be the Commander, Naval Facilities Engineering Command; the Acting Commander; their successors; or their representatives specially designated for this purpose.

(b) The provisions of this paragraph or provisions elsewhere in this contract regarding supervision, approval, or direction by the Contracting Officer or the Officer in Charge of Construction or action taken pursuant thereto, are not intended to and will not relieve the Contractor of responsibility for the accomplishment of the work, either as regards sufficiency or the time of performance, except as expressly otherwise provided for in this contract.

1.5 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (APR 1984): (D)(E)

(Applies when the amount of the contract is in excess of $10,000.)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade	Goals for female participation for each trade
[_____]	[_____]

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction," and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Director, Office of Federal Contract Compliance Programs, within 10 working days following award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the--

(1) Name, address, and telephone number of the subcontractor;
(i) Employer identification number of the subcontractor;
(2) Estimated dollar amount of the subcontract;
(3) Estimated starting and completion dates of the subcontract; and
(4) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the "covered area" is [_____]. (FAR 52.222-23)

1.6 ORAL MODIFICATION: No oral statement by any person other than the Contracting Officer or his representative, as provided in the Contract Clause entitled "Changes," will in any manner or degree modify or otherwise affect the terms of this contract.

1.7 INSURANCE:

1.7.1 Minimum Requirements: The Contractor shall procure and maintain during the entire period of performance under this contract the following minimum insurance coverage:

(a) Comprehensive general liability: $500,000 per occurrence

(b) Automobile liability: $200,000 per person; $500,000 per occurrence, $20,000 per occurrence for property damage

(c) Workmen's compensation: as required by Federal and State workers' compensation and occupational disease laws

(d) Employer's liability coverage: $100,000, except in States where workers compensation may not be written by private carriers

(e) Others as required by State law.

1.7.2 Insurance--Work on a Government Installation (APR 1984): (D)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall certify to the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract.

At least 5 days before entry of each such subcontractor's personnel on the Government installation, the Contractor shall furnish (or ensure that there has been furnished) to the Contracting Officer a current certificate of insurance, meeting the requirements of paragraph (b) above, for each such subcontractor. (FAR 52.228-5)

1.7.3 [Limited Assumption of Risk by the Government: (F)

1.7.3.1 Action: The work at [_____] is potentially hazardous. Title to all work in place shall be in the Government, and title to all property intended for incorporation into the work shall vest in the Government upon delivery to the worksite. The term "Government-owned property," as used in these paragraphs, refers to such work in place and to such other property for which titles have vested in the Government pursuant to the provisions of the preceding sentence and includes any property furnished or rented to the Contractor by the Government. Upon completion of the work, any such Government-owned property not a part of the work, except property rented to or furnished without charge to the Contractor by the Government, shall become the property of the Contractor. The vesting of title in the Government, as provided for in this paragraph, shall in no way relieve the Contractor of any obligations otherwise provided for in this contract in respect to such Government-owned property, except as expressly stated in this contract.

1.7.3.2 Scope: The Contractor represents that the contract price does not include the cost of insurance or any provision for a reserve covering the risk assumed by the Government under this paragraph. The Government assumes the risk of loss or damage to such Government-owned property, including expenses incidental to such loss or damage resulting directly or indirectly from the explosion of Government-owned or -controlled munitions, including, without limitations, ammunition, bombs, powder, dynamite, and other explosives, whether or not caused by negligence. However, the Government does not assume at any time the risk of, and the Contractor shall be responsible for, such loss or damage which is in fact covered by insurance or for which the Contractor is otherwise reimbursed or which is caused by willful misconduct or lack of good faith or willful disregard of proper instructions from the Contracting Officer on the part of any of the Contractor's directors, officers, or any of his other representatives having supervision or direction of all or substantially all the Contractor's operations under this contract.

1.7.3.3 Recourse: In the event of loss or damage to Government-owned property resulting from the risk assumed by the Government in accordance with this contract, the Contracting Officer shall determine whether, and to what extent, such property shall be rebuilt, repaired, or replaced by the Contractor or otherwise. Should the Contracting Officer's determination cause an increase or decrease in the cost of doing the work under this contract or the time required for its performance, the Contractor shall make equitable adjustment in the pertinent contract terms in the manner and upon notice as provided in the Contract Clause entitled "Changes."

1.7.3.4 Modification: The provisions of the Contract Clause entitled "Permits and Responsibilities" are to be deemed modified by this article only to the extent required to give effect to the limited assumption of risk stated in this contract.]

1.8 NO WAIVER BY THE GOVERNMENT: The failure of the Government in any one or more instances to insist upon strict performance to any of the terms of this contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon such terms or option on any future occasion.

1.9 SCHEDULE OF PRICES:

1.9.1 Data Required: Within 5 days of receipt of a notice of award, the Contractor shall prepare and submit to the Officer in Charge of Construction a schedule of prices (construction contract) on the forms furnished for this purpose. The schedule of prices shall consist of a detailed breakdown of the contract price, giving the quantities for each of the various kinds of work; the unit prices; and the total prices therefore. The detailed breakdown shall be segregated under each of the construction categories stated in this contract. The required schedule must be based on the actual breakdown of the bid price. Accordingly, subcontractors who may be involved in work under more than one of these categories shall be advised of this requirement in order to furnish such data without delay. The format, content, and number of copies required will be prescribed by the Officer in Charge of Construction and will be subject to his approval. The submission of the required data shall not otherwise affect the contract terms.

1.9.2 Submittal Instructions: Furnish four copies of the schedule of prices in accordance with the paragraph entitled "Data Required." [Divide the schedule of prices into the construction categories specified in the paragraph entitled "Construction Categories" of Section 01011.] [Identify costs for [each] [the] building, and include all work out to the 5-foot line. Work to the 5-foot line shall include all construction encompassed within a theoretical line 5 feet from the face of the exterior walls and shall include building equipment such as cooling towers and attendant construction placed beyond the 5-foot line. Identify the cost for site work, and include all work not defined as work to the 5-foot line.] Payments will not be made pursuant to the Contract Clause entitled "Payments to Contractor" until the schedule of prices has been submitted to and approved by the Contracting Officer. (G)

1.10 PAYMENTS TO THE CONTRACTOR: Payments made in accordance with the Contract Clause entitled "Payments Under Fixed-Price Construction Contract" will be made on submission of itemized requests by the Contractor and will be subject to reduction for overpayments or increase for underpayments on preceding payments to the Contractor.

1.10.1 Payment for Materials Offsite: Pursuant to the paragraph entitled "Payments to the Contractor," payments may be made to the Contractor for materials stored off construction sites. However, the following conditions must be met: (H)

(a) The conditions described in the paragraph entitled "Payments to the Contractor."

(b) The material must be within [a distance of [50] [___] miles by streets and roads] [the county of the construction site].

(c) The materials shall be adequately insured and protected from theft and exposure.

(d) The materials shall not be susceptible to deterioration or physical damage in storage or in transit to the jobsite. Items such as steel, machinery, pipe and fittings, and electrical cable are acceptable for progress payments; items such as gypsum wallboard, glass, insulation, and wall coverings are not. Payments will not be made for materials in transit to the jobsite or storage site.

1.10.2 Obligation of Government Payments: The obligation of the Government to make any of the payments required under any of the provisions of this contract shall, in the discretion of the Officer in Charge of Construction, be subject to:

(a) Reasonable deductions on account of defects in material or workmanship; and

(b) Any claims which the Government may have against the Contractor under or in connection with this contract. Any overpayments to the Contractor shall, unless otherwise adjusted, be repaid to the Government upon demand.

1.11 CONTRACTOR'S INVOICE AND CONTRACT PERFORMANCE STATEMENT: Requests for payment in accordance with the terms of the contract shall consist of:

(a) The Contractor's invoice on the form furnished for this purpose, which shall show, in summary form, the basis for arriving at the amount of the invoice; and

(b) The contract performance statement on the form furnished for this purpose, which shall show, in detail, the estimated cost percentage of completion and value of completed performance for each of the construction categories stated in this contract. The format, content, and number of copies required will be prescribed by the Officer in Charge of Construction and will be subject to his approval. The submission of the required data will not otherwise affect the contract terms.

1.12 EQUITABLE ADJUSTMENTS - WAIVER AND RELEASE OF CLAIMS:

(a) Whenever the Contractor submits a claim for equitable adjustment under any clause of this contract which provides for equitable adjustment of the contract, such claim shall include all types of adjustments in the total amounts to which the clause entitles the Contractor, including, but not limited to, adjustments arising out of delays or disruptions or both caused by such change. Except as the parties may otherwise expressly agree, the

Contractor shall be deemed to have waived: (1) any adjustments to which he otherwise might be entitled under the clause where such claim fails to request such adjustments; and (2) any increase in the amount of equitable adjustments additional to those requested in his claim.

(b) The Contractor agrees that, if required by the Contracting Officer, he shall execute a release, in form and substance satisfactory to the Contracting Officer, as part of the supplemental agreement setting forth the aforesaid equitable adjustment. The Contractor further agrees that such release shall discharge the Government, including its officers, agents, and employees, from any further claims, including, but not limited to, further claims arising out of delays and/or disruptions caused by the aforesaid change.

1.13 CHANGES BOARD AND ESTIMATES: In determining any equitable adjustment under the "Changes" clause, the Officer in Charge of Construction will, in those instances where the adjustment is estimated by the Officer in Charge of Construction to be $50,000 or more, convene and give full consideration to the report of an advisory board of three members, consisting of two Government representatives appointed by the Officer in Charge of Construction and one representative appointed by the Contractor. This board shall report to the Officer in Charge of Construction the amount of the change in cost, time, or both, resulting from the ordered change. In making all equitable adjustments under the "Changes" clause, compensation for additions will be based upon estimated costs at the time the work is performed, and credit for deductions will be based upon estimated costs at the time the contract was made. In arriving at the amount of the change in price, if any, allowance may be made for profit, overhead and general expenses, plant rental, and other similar items.

1.14 [NONDOMESTIC CONSTRUCTION MATERIALS: Pursuant to the clause of the Contract Clauses entitled "Buy American Act - Construction Materials," the requirements of the clause do not apply to the following: [_____].] (I)

1.15 AS-BUILT RECORDS:

1.15.1 As-Built Drawings: Maintain at the jobsite two sets of full-size contract drawings marked to show any deviations which have been made from the contract drawings, including buried or concealed construction and utility features revealed during the course of construction. Record the horizontal and vertical location of all buried utilities that differ from the contract drawings. These drawings shall be available for review by the Contracting Officer at all times. Upon completion of the work, deliver the marked sets of prints to the Contracting Officer. Requests for partial payments will not be approved if the marked prints are not current, and request for final payment will not be approved until the marked prints are delivered to the Contracting Officer. (H)

1.15.2 As-Built Record of Materials: A record of the materials used [is not required.] [shall be furnished prior to completion of the contract. Submission of this data is a condition for final payment under the contract. (J)

Where several manufacturers' brands, types, or classes of the item listed have been used in the project, the specific areas where each item was used shall be designated. Designations shall be keyed to the areas and spaces depicted on the contract drawing. The record of materials used shall be furnished in the following format:

MATERIALS	SPECIFICATION DESIGNATION	MANUFACTURER	MATERIALS USED (MANUFACTURER'S DESIGNATION)	WHERE USED
_____	_____	_____	_____	_____]

1.16 PROPOSED MATERIAL SUBMITTALS, CATALOG DATA, AND SAMPLES:

(a) Proposed material submittals required of the Contractor shall be made allowing sufficient time for processing, reviews, approval, and procurement before the Contractor is ready to use the material. No material shall be used prior to written approval. Submittals shall be prepared and assembled as follows:

(1) Submit seven copies of each submittal, unless specified otherwise.

(2) Present all submittals for each specification section as a complete bound volume, titled with the project title and contract number.

(3) Provide an index of included items with each volume. Title the index with the applicable specification section name and number.

(4) Clearly mark each item in the volume with the specification paragraph number to which it pertains.

(5) Assemble each volume in the same numerical sequence as specifications section paragraphs.

(6) See individual technical sections for additional information.

The Contractor shall certify on all submittals that the material being proposed conforms to contract requirements. In the event of any variance, the Contractor shall state specifically which portions vary and request approval of a substitute. The Contractor shall also certify that all Contractor-furnished equipment is able to be installed in the allocated spaces. Incomplete submittals and submittals with inadequate data will be rejected.

(b) When required, catalog data shall be on printed pages on permanent copies of the manufacturer's catalogs.

(c) Samples in the number specified shall be shipped prepaid and delivered as directed by the Officer in Charge of Construction. Samples shall be marked to show the name of the material, the name of the supplier, the contract number, the segment of work where the material represented by the sample is to be used, and the name of the Contractor submitting the sample.

1.17 [CONTRACTOR'S DAILY REPORT: The Contractor shall submit a "Daily Report to the Inspector" on the form furnished for this purpose. The form shall be completed daily and delivered to the Officer in Charge of Construction. Data to be reported include data on workers by classification, the move-on and move-off of construction equipment furnished by the Contractor and subcontractors or furnished by the Government, and material and equipment delivered to the site.] (K)

1.18 [QUANTITY SURVEYS: (L)

(a) The Government will make original and final surveys and compute the quantities of work performed or finally in place.

(b) The Contractor shall furnish surveys and computations, as necessary, to determine the quantities of work performed or placed during each period for which a progress payment is to be made. Original field notes, computations, and other records for the purpose of layout and progress surveys shall be furnished promptly to the Contracting Officer at the site of the work and will be used by the Contracting Officer to the extent necessary in determining the proper amount of progress payments due the Contractor. The Contractor shall retain a copy of the original notes, computations, and records furnished to the Contracting Officer. Unless waived by the Contracting Officer in each specific case, the Contractor shall make quantity surveys under the direction of the Contracting Officer.]

PART 2 - EXECUTION (M)

2.1 STATION REGULATIONS: The Contractor and his employees and subcontractor shall become familiar with and obey all station regulations, including fire, traffic, and security regulations. All personnel employed on the station shall keep within the limits of the work (and avenues of ingress and egress) and shall not enter any restricted areas unless required to do so and are cleared for such entry. The Contractor's equipment shall be conspicuously marked for identification.

2.1.1 Working Hours: Regular working hours shall consist of [a] [an] [8 1/2-hour] [___-hour] period established by the Contracting Officer between [7 a.m. and 5 p.m.,] [___ a.m. and ___ p.m.,] Monday through Friday, excluding Government holidays. The Contractor shall make application for work outside regular working hours 15 calendar days prior to such work in accordance with the paragraph entitled "Work Outside Regular Hours." (N)

2.1.2 Work Outside Regular Hours: If the Contractor desires to carry on work outside regular hours, including Saturdays, Sundays, and Government holidays, an application shall be submitted to the Officer in Charge of Construction. The Contractor shall allow ample time to enable satisfactory arrangements to be made by the Government for inspecting the work in progress. During periods of darkness, the different parts of the work shall be lighted in a manner approved by the Officer in Charge of Construction. All

utility cutovers shall be made after normal working hours or on Saturdays, Sundays, and Government holidays. Anticipated costs shall be included in the bid.

2.2 ORDER OF WORK: The Contractor shall schedule his work so as to cause the least amount of interference with station operations. Work schedules shall be subject to the approval of the Officer in Charge of Construction. Permission to interrupt any station roads, railroads, and/or utility service shall be requested in writing a minimum of 15 calendar days prior to the desired date of interruption.

2.3 WORK BY THE CONTRACTOR: (H)

2.3.1 Performance of Work by the Contractor (APR 1984): The Contractor shall perform on the site, and with its own organization, work equivalent to at least twenty (20) percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government. (FAR 52.236-1) (D)

2.3.2 Description of Work Performed by the Contractor: In addition to the requirements of the paragraph entitled "Performance of Work by the Contractor (APR 1984)" and prior to the commencement of work at the site, furnish to the Contracting Officer a description of the work to be performed with the Contractor's own organization and the percentage of the total amount of work to be performed under the contract which this represents. Consider the value of materials as part of the work performed by the Contractor only if the materials are to be installed on the site by the Contractor's own organization.

2.4 EXISTING WORK:

(a) The removal or altering in any way of existing work shall be carried on in such a manner as to prevent injury or damage to any portion(s) of the existing work which remain(s).

(b) All portions of existing work which have been altered in any way during construction operations shall be repaired or replaced in kind and in a manner to match existing or adjoining work, as approved by the Contracting Officer. All work of this nature shall be performed by the Contractor at the Contractor's expense and shall be performed as directed by the Officer in Charge of Construction. At the completion of all operations, existing work shall be in a condition equal to or better than that which existed before the new work started.

2.5 SANITATION: Adequate sanitary conveniences of a type approved for the use of persons employed on the work shall be constructed, properly secluded from public observation, and maintained by the Contractor in such a manner as required or approved by the Officer in Charge of Construction. These conveniences shall be maintained at all times without nuisance. Upon completion of the work, the conveniences shall be removed by the Contractor from the premises, leaving the premises clean and free from nuisance.

2.6 [PUBLIC RELEASE OF INFORMATION: (O)

(a) The Contractor shall not publicly disclose any information concerning any aspect of the materials or services relating to this bid, contract, or purchase order without the prior written approval of the Contracting Officer.

(b) The Contractor shall insert the substance of clause "(a)" of this paragraph in each subcontract and purchase order related to the project.]

2.7 SPECIFICATIONS AND STANDARDS: The specifications and standards referenced in this project specification, including addenda, amendments, and errata listed, will govern in all cases where references thereto are made. In case of differences between these specifications or standards and this project specification or its accompanying drawings, this project specification and its accompanying drawings will govern to the extent of such differences. Otherwise, the referenced specifications and standards will apply. The requirement for packaging, packing, marking, and preparation for shipment or delivery included in the referenced specifications will apply only to materials and equipment that are furnished directly to the Government and not to materials and equipmant that are to be furnished and installed by the Contractor.

2.8 OPTIONAL REQUIREMENTS: Where a choice of materials or methods, or both, is permitted in this contract, the Contractor will be given the right to exercise the option unless otherwise required by the specification.

2.9 GENERAL PROVISIONS: Any reference within this project specification to a General Provision shall be understood to be a reference to the Contract Clause(s) or the General Paragraph(s) addressing the subject matter of the particular reference.

*** END OF SECTION *** (P)

SECTION 01011

ADDITIONAL GENERAL PARAGRAPHS

DEPARTMENT OF THE NAVY
NAVAL FACILITIES
ENGINEERING COMMAND
GUIDE SPECIFICATION

NFGS-01011 (November 1986)

Superseding
NFGS-01011 (March 1985)

SECTION 01011

ADDITIONAL GENERAL PARAGRAPHS

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SECTION 01011

ADDITIONAL GENERAL PARAGRAPHS (A)

PART 1 - GENERAL

1.1 APPLICABLE PUBLICATIONS: The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only. (B)

1.1.1 Military Standards (Mil. Std.):

Mil-Std-461B	Electromagnetic Emission and Susceptibility Requirements for the Control of Electromagnetic Interference
Mil-Std-462 (Int. Not. 4)	Electromagnetic Interference Characteristics, Measurement of

1.1.2 Military Specifications (Mil. Spec.):

Mil-S-16165E	Interference Shielding Engine Electrical Systems

1.1.3 Chief of Engineers (COE) Regulation:

ER-1-1-11 Mar 73	Network Analysis System

1.1.4 Code of Federal Regulations (CFR):

40 CFR part 763--Asbestos Subpart F	Friable Asbestos-Containing Materials in Schools

1.2 PROJECT INFORMATION:

1.2.1 Contract Drawings, Maps and Specifications (JAN 1965): (C)(D)

1.2.1.1 One set of sepia of large scale contract drawings, maps and (C)
ecifications will be furnished the Contractor without charge except
plicable publications incorporated into the technical provisions by
ference. Additional sets will be furnished on request at the cost of
production. The work shall conform to the following contract drawings and
ps, all of which form a part of these specifications and are available in
e office of the Contracting Officer.

NAVFAV DRAWING NO.	TITLE
_____	_____
_____	_____
_____	_____

(FAR SUPP 52 236-7002(a))

12.1.2 Omissions from the drawings or specifications or the misdescription (C)
etails of work which are manifestly necessary to carry out the intent of
edrawings and specifications, or which are customarily performed, shall not
leve the Contractor from performing such omitted or misdescribed details of
ework but they shall be performed as if fully and correctly set forth and
scribed in the drawings and specifications.

(FAR SUPP 52.236-7002(b))

12.1.3 The Contractor shall check all drawings furnished him immediately (C)
o their receipt and shall promptly notify the Contracting Officer of any
screpancies. Figures marked on drawings shall in general be followed in
eerence to scale measurements. Large scale drawings shall in general
vrn small scale drawings. The Contractor shall compare all drawings and
rfy the figures before laying out the work and will be responsible for any
rrs which might have been avoided thereby.

(FAR SUPP 52.236-7002(c))

12.1.4 Number of Sets Furnished: In addition to the reproducible set of
aings and specifications furnished in accordance with FAR Supplement
.36-7002, the Contracting Officer will furnish up to [15] [20] [___] sets
nalf-] [full-] size drawings and [15] [20] [___] copies of the contract
eifications without charge, after award of the contract.

12.2 [Reference Drawing[s] Accompanying Specification: The following (E)
fence drawing[s] [accompanies] [accompany] this specification and [is]
r] intended only to show the original construction. Drawings are the
perty of the Government and shall not be used for any purpose other than
a intended by the specification. [The drawing[s] included with this
e.fication [is] [are] half size. Full-size drawings are available at the
der's or Contractor's expense. Information on procuring these full-size
a.ngs may be obtained from the Contracting Officer. Full-size drawings may
nspected during regular working hours at the office of the Contracting
fcer.]

NAVFAC DWG. NO.	TITLE
_____	_____
_____	_____]

1.2.3 Boring Logs: NAVFAC Drawing No[s]._____ indicate[s] the information obtained by Government investigation. The Government does not guarantee that borings indicate actual conditions, except for the exact locations and the time that they were made. [Subsurface data, not specified or indicated, have been obtained by the Government at this station. The data are available for examination by prospective bidders [in the office of the Contracting Officer] [at the station].] (F)

** OR **

1.2.3 Subsurface Data: Subsurface data, not specified or indicated, have been obtained by the Government at the station. The data are available for examination by prospective bidders [in the office of the Contracting Officer] at the station]. (F)

1.2.4 Construction Categories: The following construction [category applies] [categories apply] to all work covered by this specification: (G)

CATEGORY	DESCRIPTION
_____	_____
_____	_____
_____	_____

The construction [category] [categories] given above may be modified by the Contracting Officer as necessary during the course of the work.

1.3 INFORMATION REQUIRED OF THE CONTRACTOR:

1.3.1 Subcontractors and Personnel: Reference is made to the clause of the Contract Clauses entitled "Subcontractors." In addition to the data required by that clause, provide a list of the key personnel of the Contractor and subcontractors (including addresses and telephone numbers) for use in the event of an emergency. As changes occur and additional information becomes available, correct and change the information contained in previous lists. (H)

1.3.2 Schedule and Equipment Delivery Schedule: (I)

1.3.2.1 Construction Schedule: Within 15 days after receipt of the Notice of Award, prepare and submit to the Contracting Officer for approval a feasible construction schedule in accordance with the clause of the Contract Clauses entitled "Schedules for Construction Contract," except as modified in this contract. (I)

1.3.2.2 Equipment Delivery Schedule: Within [___] days after the Notice of Award, submit to the Contracting Officer for approval, a schedule showing the procurement plans for materials, plant, and equipment. Submit in the format (I)(J)

cribed by the Contracting Officer, and include as a minimum the following
rmation:

a. Description

b. Date of the purchase order

c. Promised shipping date

d. Name of the manufacturer or supplier

e. Date delivery is expected

f. Date the material or equipment is required, according to the current progress schedule or network.

te the construction schedule and equipment delivery schedule at monthly
rvals or as directed. Reflect any changes occurring since the last
te. Submit copies of the purchase orders and confirmation of the delivery
s as directed. Update the construction schedules and equipment schedules
each invoice for progress payment in accordance with the clause of the
ract Clauses entitled "Schedules for Construction Contract."

3.2.3 Network Analysis System: As an alternative to the preceding (I)
truction and equipment delivery schedules, the Contractor may use the
ical path method (CPM) or, subject to the approval of the Contracting
cer, some other system affording similar and equal information and control
hat provided by the CPM. An example of one of the numerous acceptable
s of network analysis systems is shown in Appendix A of COE ER-1-1-11.
use of one of these methods shall be subject to the terms of the clause of
Contract Clauses entitled "Schedules for Construction Contracts." Should
Contractor exercise the option to use a network analysis system, the
ractor also has the option of providing a schedule of prices in accordance
the paragraph of Section 01010, "General Paragraphs" entitled "Schedule
rices" or providing a network analysis system, including costs.

3.3 Information Required by Other Additional General Paragraphs: Furnish
rmation required by the following paragraphs in addition to the
rmation required by the other parts of the contract, sections of the
ification, and other subparagraphs of the paragraph "Information Required
he Contractor":

a. "Performance of Work by the Contractor"
[b. "Government-Furnished Material and Equipment"]
[c. "Electromagnetic Interference Suppression"]
[d. "Interruptions to Utilities Services"]
[e. "Interruptions to Station Operations"]
[f. "Schedule of Work" for "Hazards to [Airfield] [Heliport] Operation"]
[g. "Quantity Surveys"]

[h. "As-Built Drawings"]
[i. "As-Built Record of Material Used in Buildings"]

1.3.4 Technical Publications: Furnish the installation, operation, and (K)
aintenance manuals for all mechanical and electrical equipment and for other
ystems and products when such manuals are required by the applicable
echnical section. Other general requirements for technical publications are
pecified in [Section 15011, "Mechanical General Requirements[,] [.]"]
Section 16011, "General Requirements, Electrical[,] [.]"] [and Section 11700,
General Requirements for Medical Equipment."]

1.3.4.1 Operating Instructions: Provide operating instructions for
echanical and electrical components of the principal plant for use by
perating personnel. Laminate between thermoplastic sheets, and affix where
irected. Describe the function of the equipment, its most economical
peration, startup and shutdown procedures, procedures to follow in the event
f failure, normal maintenance practices and caution and warning notices.

1.3.4.2 Maintenance and Operation Manual: Provide [five] [_____] copies.
ind the manual between hard covers. Include installation and operating
nstructions, maintenance procedures, illustrations, drawings, detailed
escriptions, tests, adjustments, safety precautions, and a parts list.

1.3.4.3 Parts List: Submit part numbers and price lists for the equipment
o the Contracting Officer as soon as possible after the award of the
ontract, but no later than the time of delivery of the equipment.

1.3.4.4 Delivery: Deliver technical publications, including operating
nstructions, maintenance and operations manuals, and parts lists prior to
inal acceptance of the project.

1.4 PROJECT SCHEDULE [, PHASING,] AND TIME CONSTRAINTS:

1.4.1 Commencement, Prosecution, and Completion of Work (APR 84): The (C)(L)
ontractor shall be required to (a) commence work under this contract within
5] [15] [__] calendar days after the date the Contractor receives the notice
o proceed, (b) prosecute the work diligently, and (c) complete the entire
ork ready for use not later than [_____] calendar days after the required
ommencement of work. The time stated for completion shall include final
leanup of the premises.

(FAR 52.212-3)

1.4.1.1 Definitions: (H)

a. The date the Contractor receives the notice to proceed is the date of
he Notice of Award of the contract.

b. The period within which the Contractor is required to proceed allows

the mailing of the Notice of Award [and the Contractor's submission of the uired bonds and Certificate of Insurance].

c. The commencement of work is the last day of the period within which Contractor is required to proceed.

.4.1.2 [Phased Construction: Within the overall project schedule, (M) nence and complete the work in phases. Each phase of the work shall be ain the number of calendar days stated in the following schedule.

a. Scheduled Start Day: The day designated as the beginning of a icular phase; the number listed is the number of calendar days from the nencement of work.

b. Completion Day: The day designated as the end of a given phase and day the work in that phase must be completed; the number listed is the ber of calendar days from the commencement of work.

c. Schedule:

PHASE	DESCRIPTION	SCHEDULED START DAY	COMPLETION DAY
A	_____	0	_____
	_____		
	_____		
B	_____	_____	_____
	_____		
	_____		
C	Completion of remaining work	_____	_____]

4.2 Liquidated Damages - Construction (APR 84): (C)(N)

(FAR 52.212-5(a))

.4.2.1 If the Contractor fails to complete the work within the time (C)(O) cified in the contract, or any extension, the Contractor shall pay to the ernment as liquidated damages, the sum [of $_____] [listed below as damages each phase] for each day of delay.

(FAR 52.212-5(a))

.4.2.2 If the Government terminates the Contractor's right to proceed, the (P) alting damage will consist of liquidated damages until such reasonable time ay be required for final completion of the work together with any reased costs occasioned the Government in completing the work.

(FAR 52.212-5(b))

.4.2.3 If the Government does not terminate the Contractor's right to (C)

roceed, the resulting damage will consist of liquidated damages until the ork is completed or accepted.

(FAR 52.212-5(c))

1.4.2.4 [Phased Construction: For each day the Contractor fails to (P)
omplete the work of a phase within the time fixed in the contract or any xtensions thereof, a day of delay for that phase is created. The Contractor hall pay to the Government as liquidated damages at the close of business on ach day of delay for each phase, the following sums:

PHASE	DAMAGES FOR PHASE PER DAY
A	$_____
B	$_____
C	$_____]

1.5 DIVISION OF WORK:

1.5.1 Government-Furnished Material and Equipment: (Q)

1.5.1.1 To Be Furnished: The Government will furnish the following aterials and equipment for installation by the Contractor in accordance with he clause of the Contract Clauses entitled "Government-Furnished Property Short Form)."

ESIGNATION NO.	DESCRIPTION	QUANTITY
_____	_____	_____
_____	_____	_____

1.5.1.2 Delivery Schedule: Notify the Contracting Officer in writing at (R)
east [_____] calendar days in advance of the date on which the materials and quipment are required. Pick up the materials and equipment no later than 30 alendar days after the indicated required date. If the materials and quipment are not picked up by the 30th day, the Contractor will be charged or storage at the rate of [____] per 100 pounds per month or fraction thereof.

** OR **

1.5.1.2 Delivery Schedule: Materials and equipment will be available on or fter [_____] calendar days after the commencement of work.

1.5.1.3 Delivery Location: The materials and equipment [are located t _____.] [are located within _____ miles of the jobsite.] will be delivered to _____.]

1.5.1.4 Contractor's Responsibility: [Disconnect, load,] [Load,] ransport, unload, uncrate, assemble, install, connect, and test [new] [and]

sting] materials and equipment. [Uncrate new equipment in the presence of Contracting Officer to inspect for possible damaged or missing parts.] edule with the Contracting Officer a joint inspection of the materials and pment to determine their existing condition.] The Contractor shall be onsible for damage sustained by the materials and equipment after this ection.

5.2 [Government-Installed Work: _____ (S)
_____.]

2 - PRODUCTS (T)

1 FACILITIES AND SERVICES:

1.1 Availability of Utilities Services: Pursuant to the clause of the (U)
ract Clauses entitled "Availability and Use of Utilities Services," onable amounts of the following utilities will be made available to the ractor [without charge.] [at the prevailing rates.] [at the following s:]

[Electricity - [:$_____ per _____]]
[Potable Water - [:$_____ per _____]]
[Salt Water - [:$_____ per _____]]
[Compressed Air - [:$_____ per _____]]
[Steam - [:$_____ per _____]]
[Natural Gas - [:$_____ per _____]]
[Sanitary Sewer - [:$_____ per _____]]

The point at which the Government will deliver such utilities or services the quantity available is as indicated. The Contractor shall pay all s incurred in connecting, converting, and transferring the utilities to work. The Contractor shall make connections, including [providing flow-preventing devices on connections to domestic water lines;] viding meters;] and providing transformers; and make disconnections.

** OR **

1.1 Availability of Utilities Services: The clause of the Contract (U)
ses entitled "Availability and Use of Utility Services" is not envoked. Contractor shall provide his own utilities.

1.2 [Contractor's Storage Area: The clause of the Contract Clauses tled "Operations and Storage Areas" and the following apply:

1.2.1 Storage in Existing Buildings: The Contractor shall be working (V)
[around] existing building[s]; the storage of material [will be

llowed [in a ___-square foot area] [where indicated] [will not be allowed in he building[s]].

2.1.2.2 Storage Size and Location: The [roofed] [enclosed] [open] site (V) vailable for storage shall be [confined to the indicated operations area] within 1,000 feet of the operations area] [as indicated]. The storage area ill be approximately _____ square feet.

2.1.3 [Temporary Buildings: Locate these [where indicated.] [where (V) irected and within the indicated operations area.] [within 1,000 feet of the perations area].]

2.1.3.1 [Maintenance of Temporary Facilities: Suitably paint and maintain (V) he temporary facilities. Failure to do so will be sufficient reason to equire their removal.]

2.1.3.2 [Navy Construction Representative's Office: Provide an office with (W) minimum of [200] [____] square feet of useful floor area for the exclusive se of Government personnel, in addition to and separate from any other office pace provided by the Contractor. Provide a weathertight structure with dequate [heating and cooling,] toilet facilities, lighting, ventilation, a -foot by 8-foot plan table, a standard size office desk and chair, and orking communications facilities. [Provide either a 1,500-watt radiant eater and a window-mounted air conditioner rated at 9,000 Btus minimum or a indow-mounted heat pump of the same minimum heating and cooling ratings.] rovide a door with a cylinder lock and windows with locking hardware. urnish all necessary utilities. Locate [as directed] [where indicated]. fter completion of the work, remove the entire structure from the site.]

2.1.3.3 [Contractor Quality Control Records and Field Office: Provide on (X) he jobsite an office with approximately [200] [____] square feet of useful loor area for the exclusive use of the Contractor's quality control epresentative. Provide a weathertight structure with adequate [heating and ooling,] toilet facilities, lighting, ventilation, a 4-foot by 8-foot plan able, a standard size office desk and chair, and working communications acilities. [Provide either a 1,500-watt radiant heater and a window-mounted ir conditioner rated at 9,000 Btus minimum or a window-mounted heat pump of he same minimum heating and cooling ratings.] Provide a door with a cylinder ock and windows with locking hardware. Furnish all necessary utilities. ocate [as directed] [where indicated]. Contractor quality control records hall be filed in the office and available at all times to the Government. fter completion of the work, remove the entire structure from the site.]

2.1.4 [Project Sign: Within 15 days after the commencement of work, (Y) rovide [one] [_____] project identification sign[s] at the location[s] indicated] [designated]. Construct the sign[s] using 4-foot by 8-foot by /2-inch thick exterior grade plywood, preservative-treated lumber, and alvanized hardware. Paint the plywood portion of the sign[s] using one coat f lead-free alkyd oil primer paint and two coats of exterior white enamel, ut do not paint the preservative-treated lumber portion of the sign[s].

ering [and details of construction] shall be as indicated. Maintain the
[s] throughout the life of the project. Upon completion of the project,
ve the sign[s] from the site.]

.2 RESTRICTIONS ON EQUIPMENT:

.2.1 Electromagnetic Interference Suppression: (Z)

a. Electric Motors. Motors shall comply with MIL-STD-461 relative to
ated and conducted electromagnetic interference. A test for
tromagnetic interference will not be required for motors that are
tical physically and electrically to those that have previously met the
irements of MIL-STD-461. An electromagnetic interference suppression test
not be required for electric motors without commutation or sliprings
ing no more than one starting contact and operated at 3,600 revolutions per
te or less.

b. Contractor's Construction Equipment: Equipment used by the
ractor shall comply with Mil. Spec. MIL-S-16165 for internal combustion
nes and MIL-STD-461 for other devices capable of producing radiated or
ducted interference.

c. Tests for Electromagnetic Interference Suppression: Conduct tests on
tric motors and the Contractor's construction equipment in accordance with
-STD-461 and MIL-STD-462. The test location shall be reasonably free from
ated and conducted interference. Furnish the testing equipment,
ruments, and personnel for making the tests; a test location; and other
ssary facilities.

.2.2 Radio Transmitter Restrictions: Conform to the restrictions and (AA)
edures for the use of radio transmitting equipment, as directed. Do not
transmitters without prior approval.

.3 RESTRICTIONS ON OPERATIONS:

.3.1 Restrictions Upon Interrupting Utility Services: The clause of the (AB)
ract Clauses entitled "Schedules for Construction Contract"; the paragraph
Section 01010, "General Paragraphs," entitled "Order of Work"; and the
lowing apply:

a. Ensure that new utility lines are complete, except for the
nection, before interrupting existing service.

b. [Interruption to Water, Sanitary Sewer, Storm Sewer, Telephone
vice, Electric Service, [_____,] Air Conditioning, Heating, Fire
m, and Compressed Air: These] [The utility interruption to _____] shall
considered utility cutovers pursuant to the paragraph of Section 01010,
eral Paragraphs," entitled "Work Outside Regular Hours." [Such

nterruption shall be further limited to _____.] This limit includes ime for deactivation and reactivation.

2.3.2 Restrictions Upon Interrupting Station Operations: Reference is made (AC)
o the paragraph of Section 01010, "General Paragraphs," entitled "Order of ork." The work under this contract requires special attention to the cheduling and conduct of the work in connection with existing operating ystems. Identify on the project schedule each factor which constitutes a otential interruption of operations. The following conditions apply:

a. [_____]
b. [_____.]

2.3.3 [Coordination With Other Work: The clause of the Contract Clauses (AD)
ntitled "Other Contracts"; the paragraph entitled "Order of Work"; and the ollowing apply:]

2.3.3.1 [Occupied Building[s]: The Contractor shall be working [in an (AD)
xisting building] [around existing buildings] which [is][are] occupied. [Do ot enter the building[s] without prior approval of the Contracting Officer.] Relocate movable furniture [approximately [_____] [6 feet] away from the ontractor's working area] [as required to perform the work], protect the urniture, and replace the furniture in [its] [their] original location[s] pon completion of the work.] Leave attached equipment in place, and protect it] [them] against damage, or temporarily disconnect, relocate, protect, and einstall [it] [them] at the completion of the work. [The Government will emove [and relocate] other Government property in the areas of the uilding[s] scheduled to receive work.]]

2.3.3.2 [Station Operation: _____.] (AD)

2.4 SECURITY REQUIREMENTS: No employee or representative of the Contractor ill be admitted to the work site without satisfactory proof of United States itizenship or is specifically authorized admittance to the work site by the fficer in Charge of Construction.

2.4.1 Extraordinary Security Requirmments: The clause of the Contract (AE)
lauses entitled "Identification of Employees" and the following apply:

2.4.1.1 Identification Badges: [These will be furnished without charge, if (AE)
equired, but application for and use of badges will be as directed. mmediately report instances of lost or stolen badges to the Contracting fficer.] [These will not be required.]

2.4.1.2 [_____: _____.] (AE)

2.4.2 [Safety Plan: The work under this contract is potentially azardous. Pursuant to the additional measured requirement of the Contract lause entitled "Accident prevention," the Contractor shall submit in writing roposals for effectuating accident prevention and shall meet in conference

he Contracting Officer to discuss and develop mutual understandings
ve to the administration of the overall safety program.]

3 [Hazards to [Airfield] [Heliport] Operation: Accomplish all (AG)
uction work on [the runways, taxiways, and parking aprons and in the end
of the runways and 75 feet to each side of the runways and taxiways]
anding strip, 75 feet to each side thereof, and on the taxiways and
g aprons] with extreme care regarding the operation of aircraft.
ate closely, and coordinate with [the Operations Officer and] the
cting Officer. Park equipment in an area designated by the Contracting
r. Under no circumstances shall equipment be parked overnight or for
tended period of time in the proximity of the [runways or taxiways]
ng strip]. Leave no material in areas where extreme care is to be taken
ing the operation of aircraft.]

3.1 [Schedule of Work: Schedule work to conform to aircraft operating (AG)
les. The Government will exert every effort to schedule aircraft
ions so as to permit the maximum amount of time for the Contractor's
ties; however, in the event of emergency, intense operational demands,
e wind conditions, and other such unforeseen difficulties, the
ctor shall discontinue operations at the specified locations in the
ft operational area for the safety of the Contractor and military
nnel and Government property. Submit a schedule of the work to the
cting Officer [for transmittal to the Operations Officer] describing the
o be accomplished; the location of the work, noting distances from the
f [runways, taxiways] [landing strips] and buildings and other
ures, as necessary; and dates and hours during which the work is to be
lished. Keep the approved schedule of work current, and notify the
cting Officer of any changes prior to beginning each day's work.]

3.2 [Daytime Markings: During daylight, mark stationary and mobile (AG)
ent with international orange and white checkered flags, mark the
al, and work with yellow flags.]

3.3 [Nighttime Markings: During nighttime, which begins 2 hours before (AG)
n and ends 2 hours after sunrise, mark stationary and mobile equipment
terial, and work with red lanterns. Where the [Operations Officer]
acting Officer] determines that the red lanterns may confuse pilots
aching for landings, the [Operations Officer] [Contracting Officer] may
that the red lanterns be left off or that the color of the globes be
d.]

3.4 [Excavation: Open only those trenches for which material is on (AG)
nd ready for placing therein. As soon as possible after the material
en placed and work approved, backfill and compact the trenches as
ied.]

4 [Extraordinary Restrictions Regarding Access of Vehicles and (AH)
g: _____.]

5 [Extraordinary Cleanup Requirements: The clause of the Contract (AI)

clauses entitled "Cleaning Up" and the following cleanup requirements apply: _____.]

2.4.6 [Existing Conditions and Extra Obligations of the Contractor:] (AJ)

2.5 ACTIONS REQUIRED OF THE CONTRACTOR:

2.5.1 Materials and Equipment To Be Salvaged: The clause of the Contract Clauses entitled "Salvage Materials and Equipment" applies to existing materials and equipment to be removed but to remain the property of the Government. They are listed [in this paragraph] [in Section_____]. Remove and handle the material and equipment without damage and deliver into storage on the station at the delivery point designated [in Section _____, "_____."] [in this paragraph: (AK)

MATERIALS AND EQUIPMENT	DELIVERY POINT
_____	_____
_____	_____
_____	_____.]

2.5.2 Location of Underground Facilities: Verify the elevations of existing piping, utilities, and any type of underground obstruction not indicated or specified to be removed but indicated in locations to be traversed by piping, ducts, and other work to be installed. Verify the elevations before the new work is laid, closer than the nearest manhole or other structure at which an adjustment in grade could be made. For additional work required by reason of conflict between new and existing work, an adjustment in contract price will be made in accordance with the clause of the Contract Clauses entitled "Differing Site Conditions." (AL)

2.5.3 Station Permits: Obtain these pursuant to the paragraph of Section 01010, "General Paragraphs," entitled "Station Regulations." Permits are required for, but are not necessarily limited to, welding, digging, and burning. Allow [7] [__] calendar days for processing of the application.

2.5.4 Storm Protection: If a warning of gale force winds is issued, take precautions to minimize any danger to persons, and protect the work and any nearby Government property. Precautions shall include, but are not limited to, closing openings; removing loose materials, tools, and equipment from exposed locations; and removing or securing scaffolding and other temporary work. Close openings in the work if storms of lesser intensity pose a threat to the work or any nearby Government property. (H)

2.5.5 Asbestos Material: If material is encountered which might contain asbestos but must be disturbed, the Contractor and his employees shall avoid coming in contact with the material. Instead, the Contractor shall notify the Contracting Officer in writing concerning the possible asbestos material. Within 14 calendar days, the Contracting Officer will perform laboratory (AM)

:s to determine if there is asbestos. If there is no asbestos or if the
:stos poses no danger, the Contracting Officer will direct the Contractor
)roceed without change. If the asbestos must be handled, the Contracting
.cer will direct a change pursuant to the clauses of the Contract Clauses
.tled "Changes" and "Differing Site Conditions."

*** OR ***

5.5 Asbestos Material: Asbestos-containing materials although not (AM)
.cated as such, might be encountered by the Contractor during construction
'ations. Accordingly, the Contractor shall remain alert to the possibility
:ncountering such unidentified materials during construction operations and
i encountering them shall stop that part of the work which could impact,
ianically abrade, or otherwise disturb such materials and, instead, notify
Contracting Officer in writing of such findings within 2 days. The
:racting Officer will then either direct a resumption of that part of the
; so stopped or direct that sample(s) be taken and and tested before that
: is resumed. The Contractor shall handle the asbestos-containing material
'equired by Section 02075, "Removal and Disposal of Asbestos Materials."
.s intended that all existing friable and nonfriable materials such as, but
limited to, asbestos-cement pipe, ceiling tiles, rigid insulation
:rings, and vinyl-asbestos floor tile, not otherwise identified as to
:stos content and which could release airborne concentrations of asbestos
:rs in a manner dangerous to human health upon disturbance during
:truction operations, be identified. Sampling and testing of such friable
nonfriable materials shall be in accordance with 40 CFR 763, under the
:ction of a certified industrial hygienist meeting the requirements of
:ion 02075. Within 40 CFR 763 vis-a-vis this section, the term "local
:ation agency" equates to the word "Contractor"; the term "school" or
iool building" equates to the phrase "areas of work under this contract";
the word "should" equates to the word "shall." If such asbestos-
.aining materials are encountered and must be handled, a change pursuant to
clauses of the Contract Clauses entitled "Changes" and "Differing Site
litions" will be directed.

*** END OF SECTION *** (AN)

APPENDIX B

A201

ARTICLES 4, 7 AND 8

NSTRUCTION SHEET

OR AIA DOCUMENT A201, GENERAL CONDITIONS OF THE ONTRACT FOR CONSTRUCTION—1987 Edition

GENERAL INFORMATION

1. Purpose

AIA Document A201, a general conditions forms, is intended to be used as one of the Contract Documents forming the Construction Contract. In addition, it is frequently adopted by reference into a variety of other agreements, including the Owner-Architect agreements and the Contractor-Subcontractor agreements, in order to establish a common basis for the primary and secondary relationships on the typical construction project.

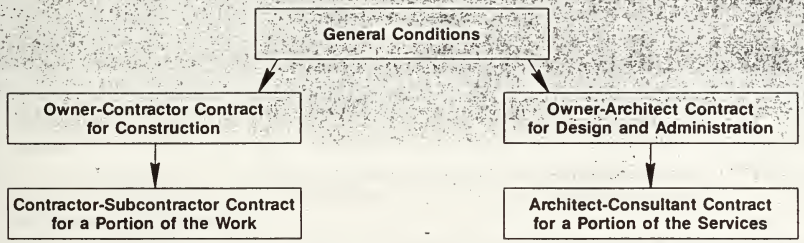
2. Related Documents

The current edition of A201 is incorporated by specific reference into two AIA Owner-Contractor agreements (A101 and A111) and several AIA Owner-Architect agreements (B141, B151, B161 and B181). It may also be adopted by indirect reference when the prime Agreement between the Owner and Contractor is adopted into a Subcontract, such as AIA Document A401, or when the prime Agreement between the Owner and Architect is adopted into Architect-Consultant agreements such as AIA Documents C141, C142 and C161. Such incorporation by reference is a valid legal drafting method, and documents so incorporated are generally interpreted as part of the respective contract.

The Contract Documents, including A201, record the Contract for Construction between the Owner and Contractor. The other Contract Documents include:

Owner-Contractor Agreement Form (i.e., A101 or A111)
Supplementary and Other Conditions
Drawings
Specifications
Modifications

Also included in the Contract Documents are addenda issued prior to execution of the Contract and other documents listed in the Agreement. The A201 document is considered the keystone document coordinating the many parties involved in the construction process. As mentioned above and diagramed below, it is a vital document used to allocate the proper legal responsibilities of the parties.



The AIA publishes other General Conditions that parallel A201 for the construction management family of documents (AIA Document A201/CM) and the interiors family of documents (AIA Document A271). For certain federal projects, the AIA publishes Federal Supplementary Conditions (AIA Document A201/SC) for use with A201.

3. Arbitration

The A201 document incorporates ARBITRATION according to the Construction Industry Arbitration Rules of the American Arbitration Association. Arbitration is BINDING AND MANDATORY in most states and under the federal Arbitration Act. In a minority of states, arbitration provisions related to future disputes are not enforceable, but arbitration is enforceable if agreed to after the dispute arises. A few states require that the contracting parties be especially notified that the written contract contains an arbitration provision by: a warning on the face of the document; specific placement of the arbitration provision within the document; or specific discussions among the parties prior to signing the document.

Arbitration provisions have been included in most AIA contract forms since 1888 in order to encourage alternative dispute resolution procedures and to provide users of AIA documents with legally enforceable arbitration provisions when the parties choose to adopt arbitration into their contract. Individuals may, however, choose to delete the arbitration provisions based upon their business decisions with the advice of counsel. To obtain a copy of the Construction Industry Arbitration Rules, write to the American Arbitration Association, 140 West 51st St., New York, NY 10020.

Use of Non-AIA Forms

If a combination of AIA documents and non-AIA documents is to be used, particular care must be taken to achieve consistency of language and intent. Certain owners require the use of owner-contractor agreements with general conditions and other contract forms which they prepare. Such forms should be carefully compared with the standard AIA forms for which they are being substituted before execution of an agreement. If there are any significant omissions, additions or variances from the terms of the related standard AIA forms, both legal and insurance counsel should be consulted.

Use of Current Documents

Prior to using any AIA document, the user should consult the AIA, an AIA component chapter or a current AIA Documents Price List to determine the current edition of each document.

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A201 may not be reproduced for Project Manuals. Rather, if a user wishes to include it in a Project Manual, the normal practice is to purchase a quantity of the pre-printed forms and bind one in each of the Project Manuals. Modifications may be accomplished through the use of separate Supplementary Conditions, such as those derived from AIA Document A51I.

Unlike the instruction sheets accompanying some AIA documents, this A201 Instruction Sheet does not include a license granting permission to reproduce the A201 document. AIA will not permit the reproduction of this document or the use of substantial portions of language from it, except upon written request and receipt of written permission from the AIA.

HANGES FROM THE PREVIOUS EDITION

Format Changes

The provisions dealing with the rights and responsibilities of the Architect have been moved from Article 2 to Article 4, retitled Administration of the Contract, in order to focus on the Owner and the Contractor as the parties to the Construction Contract. Miscellaneous Provisions, formerly Article 7, is now Article 13.

Changes in Content

The 1987 edition of A201 revises the 1976 edition to reflect changes in construction industry practices and the law. Comments and assistance in this revision were received from numerous individuals and organizations, including those representing owners, architects, engineers, specifiers, general contractors, subcontractors, sureties, attorneys and arbitrators.

Substantial changes have been made to the A201 document. The principal changes are as follows.

Article 3: Contractor

Warranty—The warranty provision now explicitly excludes damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, and normal wear and tear under normal usage.

Article 4: Administration of the Contract

Review of Shop Drawings—The provision governing architect's review of shop drawings has been expanded, and now requires that the architect be given sufficient time in his or her professional judgment to conduct an adequate review. The general limitation on the purpose of the Architect's review to checking for conformance with the information given and the design concept expressed in the Contract Documents has been retained. In addition, language has been added specifically excluding purposes of checking details that are the responsibility of the Contractor.

Claims and Disputes—Provisions governing the handling of Claims and disputes have been expanded and brought together in a single paragraph to spell out procedures more clearly and sequentially; diagrams of the Change Order and Claims processes may be found on the last page of this Instruction Sheet. In the interest of expediting arbitration proceedings, a notice of demand for arbitration is now required to include all causes of action then known to the party filing the demand. Limitations on consolidation or joinder in arbitration of the Architect or the Architect's employees or consultants have been retained.

Delays Due to Adverse Weather Conditions—Claims for delay due to adverse weather conditions must now be substantiated by data showing that such conditions were out of the ordinary and had an adverse effect on the scheduled construction.

Article 5: Subcontractors

Contingent Assignment of Subcontracts—A new provision assigns Subcontracts to the Owner in the event that the Contract is terminated, and also provides for adjustment of the Subcontractor's compensation if termination has resulted in suspension of the Work for more than 30 days. Both Owner and Subcontractors are thus given a measure of protection from the effects of termination.

Article 7: Changes in the Work

This article has undergone substantial revision, and provides for a new type of document. The Change Order is now required to be signed by the Owner, Contractor and Architect. In the event the Contractor's agreement cannot be obtained, a new document, a Construction Change Directive which is signed by the Owner and Architect, shall be issued. Both of these situations were previously covered by Change Orders. Now they are separated so that they can, if necessary, be handled independently. A diagram of the process may be found on the last page of this Instruction Sheet.

Article 9: Payments and Completion

Substantial Completion—The Substantial Completion provisions now explicitly allow for partial occupancy or use. A Certificate of Substantial Completion covering a portion of Work is provided for, and consent of the insurer of the property is required.

Article 10: Protection of Persons and Property

Asbestos, PCB and Other Hazardous Wastes—The problem of hazardous wastes is addressed, for the first time, in a paragraph prescribing procedures to be followed in the event such substances are encountered on the site. Under its provisions, the Work may only proceed in the affected area by written consent of the Owner and Contractor, or in accordance with a determination of the Architect upon which arbitration has not been demanded.

Article 11: Insurance and Bonds

This article has been expanded to cover bonds as well, and it is now provided that bonding requirements must be made known to the Contractor in the bidding requirements or at the time the Contract is signed. The Contractor, in turn, is required to furnish copies of the bonds on request to any person appearing to be a beneficiary of them.

Owner's property insurance is now required to be written in the full amount of the Contract Sum and adjusted for changes in the Contract Sum effected by Change Order. The coverages to be included on the "all-risk" policy form are given in much greater detail because "all-risk" merely means coverage of all risks not specifically excluded. In addition, the Owner is now required to insure materials stored off-site or in transit.

Article 12: Uncovering and Correction of Work

Correction of Work—The correction period has been extended with respect to Work performed after Substantial Completion, so that such Work is also covered by a one-year correction period.

Article 13: Miscellaneous Provisions

Statutory Limitation Period—A separate paragraph has been included under Miscellaneous Provisions giving the dates of commencement of the statutory limitation period with respect to acts or failures to act occurring at different points in the Project. This paragraph covers a range of situations and sets three commencement dates: one for occurrences before Substantial Completion, another for those taking place between Substantial Completion and issuance of the final Certificate for Payment, and a third for those taking place after the final Certificate has been issued.

Article 14: Termination or Suspension of the Contract

Procedures are set out for suspension of the Contract by the Owner for reasons other than the fault of the Contractor. A provision allowing for termination in like circumstances has been included in AIA Document A511, Guide for Supplementary Conditions.

Further details on these changes may be found in the *Architect's Handbook of Professional Practice* when revised. A side-by-side comparison of the 1976 and 1987 editions of A201 will be available for a limited time after publication of the 1987 edition.

C. USING THE A201 FORM

Modifications

Users are encouraged to consult an attorney before using an AIA document. Particularly with respect to licensing laws, duties imposed by building codes, interest charges, arbitration and indemnification, this document may require modification with the assistance of legal counsel to fully comply with state or local laws regulating these matters.

Generally, necessary modifications to the General Conditions may be accomplished by Supplementary Conditions included in the Project Manual and referenced in the Owner-Contractor Agreement. See AIA Document A511, Guide for Supplementary Conditions, for model provisions and suggested format for the Supplementary Conditions.

Because A201 is designed for general usage, it does not provide all the information and legal requirements needed for a specific Project and location. Necessary additional requirements must be provided in the other Contract Documents, such as the Supplementary Conditions. Consult AIA Document A521, Uniform Location of Subject Matter, to determine the proper location for such additional stipulations.

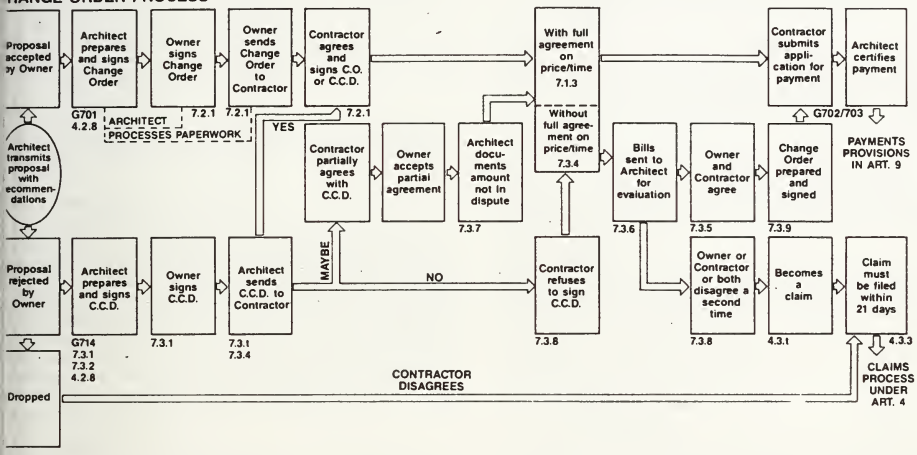
It is definitely not recommended practice to retype the standard document. Besides being a violation of copyright, retyping can introduce typographical errors and cloud the legal interpretation given to a standard clause when blended with modifications. Retyping eliminates one of the principal advantages of standard form documents. By merely reviewing the modifications to be made to a standard form document, parties familiar with that document can quickly understand the essence of the proposed relationship. Commercial exchanges are greatly simplified and expedited, good-faith dealing is encouraged, and otherwise latent clauses are exposed for scrutiny. In this way, contracting parties can more confidently and fairly measure their risks.

HANGE ORDERS AND CLAIMS

he diagrams below are graphic examples of the Change Order and Claims processes under the 1987 edition of AIA Document A201. hese diagrams are presented for instructional purposes only, and are not intended to augment or supersede any contract language ontained in the document. Users are urged to read the document in its entirety and to consult the relevant contract language regard- ıg the particulars of the processes diagrammed below.

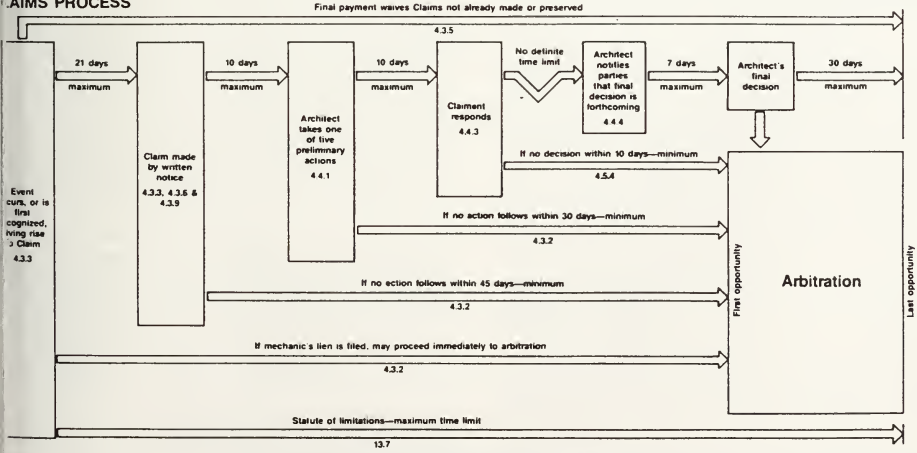
Change Order may be initiated by the Owner, Contractor or Architect. Typically, upon initiation of the Change Order process, the rchitect prepares a copy of AIA Document G709, Proposal Request, and submits it to the Contractor for pricing. This is then con- eyed back through the Architect to the Owner, beginning the process diagrammed below.

HANGE ORDER PROCESS



The Claims process may be started through a variety of circumstances, including failure to agree upon the terms of a Change Order is shown in the diagram above. Once the Claim arises, the Owner and Contractor, together with the Architect, seek resolution of he dispute by following specific steps established in the Contract Documents and particularly in A201. These steps are generalized n the diagram below.

AIMS PROCESS



wner or a separate contractor except with written consent of e Owner and of such separate contractor; such consent shall ot be unreasonably withheld. The Contractor shall not unrea- nably withhold from the Owner or a separate contractor the ontractor's consent to cutting or otherwise altering the Work.

15 CLEANING UP

15.1 The Contractor shall keep the premises and surround- g area free from accumulation of waste materials or rubbish used by operations under the Contract. At completion of the 'ork the Contractor shall remove from and about the Project aste materials, rubbish, the Contractor's tools, construction quipment, machinery and surplus materials.

15.2 If the Contractor fails to clean up as provided in the ontract Documents, the Owner may do so and the cost ereof shall be charged to the Contractor.

.16 ACCESS TO WORK

.16.1 The Contractor shall provide the Owner and Architect ccess to the Work in preparation and progress wherever ocated.

.17 ROYALTIES AND PATENTS

.17.1 The Contractor shall pay all royalties and license fees. he Contractor shall defend suits or claims for infringement of atent rights and shall hold the Owner and Architect harmless om loss on account thereof, but shall not be responsible for uch defense or loss when a particular design, process or prod- ct of a particular manufacturer or manufacturers is required by ie Contract Documents. However, if the Contractor has rea- on to believe that the required design, process or product is an nfringement of a patent, the Contractor shall be responsible for uch loss unless such information is promptly furnished to the rchitect.

.18 INDEMNIFICATION

.18.1 To the fullest extent permitted by law, the Contractor hall indemnify and hold harmless the Owner, Architect, Archi- ect's consultants, and agents and employees of any of them om and against claims, damages, losses and expenses, includ- ng but not limited to attorneys' fees, arising out of or resulting om performance of the Work, provided that such claim, dam- ge, loss or expense is attributable to bodily injury, sickness, isease or death, or to injury to or destruction of tangible prop- rty (other than the Work itself) including loss of use resulting nerefrom, but only to the extent caused in whole or in part by egligent acts or omissions of the Contractor, a Subcontractor, nyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not uch claim, damage, loss or expense is caused in part by a party ndemnified hereunder. Such obligation shall not be construed o negate, abridge, or reduce other rights or obligations of ndemnity which would otherwise exist as to a party or person escribed in this Paragraph 3.18.

.18.2 In claims against any person or entity indemnified nder this Paragraph 3.18 by an employee of the Contractor, a ubcontractor, anyone directly or indirectly employed by them r anyone for whose acts they may be liable, the indemnifica- on obligation under this Paragraph 3.18 shall not be limited by limitation on amount or type of damages, compensation or enefits payable by or for the Contractor or a Subcontractor nder workers' or workmen's compensation acts, disability enefit acts or other employee benefit acts.

.18.3 The obligations of the Contractor under this Paragraph .18 shall not extend to the liability of the Architect, the Archi- tect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifica- tions, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture iden- tified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unrea- sonably withheld.

4.1.3 In case of termination of employment of the Architect, the Owner shall appoint an architect against whom the Con- tractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former architect.

4.1.4 Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to arbitration.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Para- graph 12.2. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicat- ing that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on- site observations as an architect, the Architect will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Con-

tractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Decision of Architect. Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to arbitration or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to arbitration or litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.4.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.

4.3.3 Time Limits on Claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

4.3.4 Continuing Contract Performance. Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.5 Waiver of Claims: Final Payment. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents; or

.3 terms of special warranties required by the Contract Documents.

4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.7 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

4.3.8 Claims for Additional Time

4.3.8.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.8.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

4.3.9 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.3.7 or 4.3.8.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 The Architect will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

4.4.2 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

4.4.3 If a Claim has not been resolved, the party making the Claim shall, within ten days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.

4.4.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days, which decision shall be final and binding on the parties but subject to arbitration. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.5 ARBITRATION

4.5.1 Controversies and Claims Subject to Arbitration. Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies or Claims relating to aesthetic effect and except those waived as provided for in Subparagraph 4.3.5. Such controversies or Claims upon which the Architect has given notice and rendered a decision as provided in Subparagraph 4.4.4 shall be subject to arbitration upon written demand of either party. Arbitration may be commenced when 45 days have passed after a Claim has been referred to the Architect as provided in Paragraph 4.3 and no decision has been rendered.

4.5.2 Rules and Notices for Arbitration. Claims between the Owner and Contractor not resolved under Paragraph 4.4 shall, if subject to arbitration under Subparagraph 4.5.1, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Notice of demand for arbitration shall be filed in writing with the other party to the Agreement between the Owner and Contractor and with the American Arbitration Association, and a copy shall be filed with the Architect.

4.5.3 Contract Performance During Arbitration. During arbitration proceedings, the Owner and Contractor shall comply with Subparagraph 4.3.4.

4.5.4 When Arbitration May Be Demanded. Demand for arbitration of any Claim may not be made until the earlier of (1) the date on which the Architect has rendered a final written decision on the Claim, (2) the tenth day after the parties have presented evidence to the Architect or have been given reasonable opportunity to do so, if the Architect has not rendered a final written decision by that date, or (3) any of the five events described in Subparagraph 4.3.2.

4.5.4.1 When a written decision of the Architect states that (1) the decision is final but subject to arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

4.5.4.2 A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.5.1 and 4.5.4 and Clause 4.5.4.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

4.5.5 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a dispute not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

4.5.6 Claims and Timely Assertion of Claims. A party who files a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. When a party fails to include a Claim through oversight, inadvertence or excusable neglect, or when a Claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.

4.5.7 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such change.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

- **.1** a change in the Work;
- **.2** the amount of the adjustment in the Contract Sum, if any; and
- **.3** the extent of the adjustment in the Contract Time, if any.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

- **.1** costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' or workmen's compensation insurance;
- **.2** costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- **.3** rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- **.4** costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- **.5** additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination.

7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

.4 MINOR CHANGES IN THE WORK

.4.1 The Architect will have authority to order minor changes n the Work not involving adjustment in the Contract Sum or xtension of the Contract Time and not inconsistent with the ntent of the Contract Documents. Such changes shall be ffected by written order and shall be binding on the Owner nd Contractor. The Contractor shall carry out such written rders promptly.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

8.3.3 This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

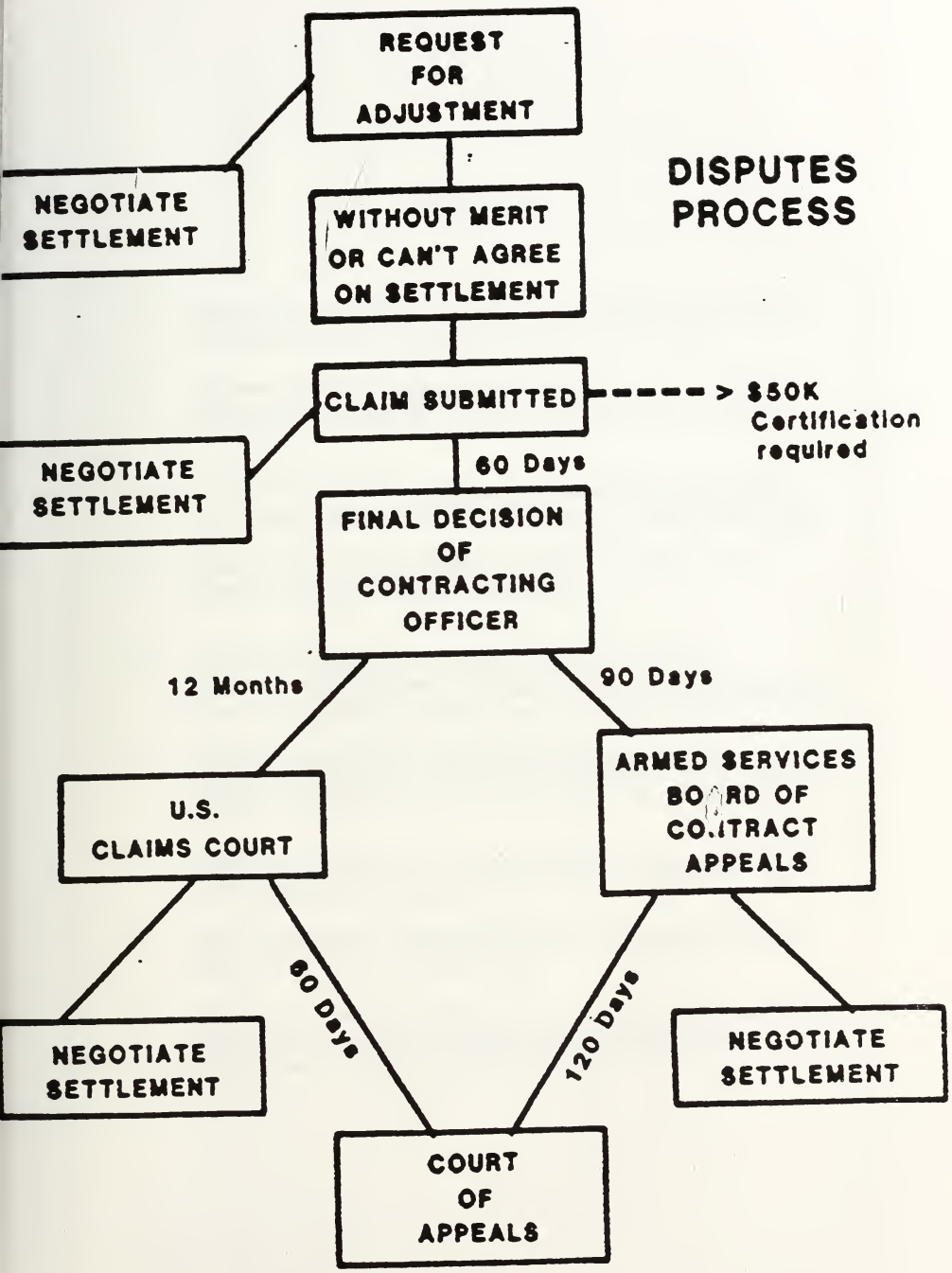
9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the

APPENDIX C

SCHEMATIC FOR

GOVERNMENT DISPUTES


REQUEST FOR ADJUSTMENT
NEGOTIATE SETTLEMENT
WITHOUT MERIT OR CAN'T AGREE ON SETTLEMENT
DISPUTES PROCESS
CLAIM SUBMITTED
> $50K Certification required
NEGOTIATE SETTLEMENT
60 Days
FINAL DECISION OF CONTRACTING OFFICER
12 Months
90 Days
U.S. CLAIMS COURT
ARMED SERVICES BOARD OF CONTRACT APPEALS
60 Days
120 Days
NEGOTIATE SETTLEMENT
NEGOTIATE SETTLEMENT
COURT OF APPEALS

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Thesis
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